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REGULATION OF WAGES PAID TO EMPLOYEES BY CONTRACTORS AWARDED GOVERNMENT BUILDING CONTRACTS

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HEARINGS

BEFORE THE

COMMITTEE ON LABOR
HOUSE OF REPRESENTATIVES

SEVENTY-SECOND CONGRESS

FIRST SESSION

ON

S. 3847 and H. R. 11865

BILLS RELATING TO THE RATE OF WAGES FOR LABORERS AND MECHANICS EMPLOYED ON PUBLIC BUILDINGS OF THE UNITED STATES AND THE DISTRICT OF COLUMBIA BY CONTRACTORS AND SUBCONTRACTORS, AND FOR OTHER PURPOSES

APRIL 28, MAY 3, 9, 11, 12, 1932

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1932

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COMMITTEE ON LABOR

HOUSE OF REPRESENTATIVES

SEVENTY-SECOND CONGRESS, FIRST SESSION

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REGULATION OF WAGES PAID TO EMPLOYEES BY CONTRACTORS AWARDED GOVERNMENT BUILDING CONTRACTS

THURSDAY, APRIL 28, 1932

HOUSE OF REPRESENTATIVES,
COMMITTEE ON LABOR,
Washington, D. C.

The Committee met at 10.30 o'clock, a. m., Hon. William P. Connery, jr. (chairman), presiding.

The CHAIRMAN. The day and hour have arrived for the hearings on the bill, S. 3847, "To amend the act approved March 3, 1931, relating to the rate of wages for laborers and mechanics employed by contractors and subcontractors on public buildings."

(The bill referred to is as follows:)

[S. 3847, Seventy-second Congress, first session]

AN ACT To amend the act approved March 3, 1931, relating to the rate of wages for laborers and mechanics employed by contractors and sybcontractors on public buildings

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors or subcontractors, and for other purposes," approved March 3, 1931, is amended to read as follows:

"That the advertised specifications for every contract in excess of $5,000 for construction, alteration, or repair of public buildings or public works in the District of Columbia or in any city, town, village, or other civil subdivision of any State, to which the United States or the District of Columbia is to become a party and which requires or involves the employment of mechanics or laborers shall contain a provision stating the prevailing rate of wages as determined by the Secretary of Labor, for various grades of mechanics and laborers for work of a similar nature in the District of Columbia or in the city, town, village, or other civil subdivision of any State in which all or the principal part of the particular contract work is located, and every contract for the construction of public buildings or public works to which the United States or the District of Columbia shall become a party shall contain a stipulation that the contractor and his subcontractors shall pay the mechanics and laborers employed directly on the site of such work at not less than the rate of wages stated in the advertised specifications. If, however, the work contemplated by the contract requires more than three months for its completion, the Secretary of Labor, at the request of the head of the department, independent establishment, or other agency of the Government concerned, or on petition of the contractor or his subcontractors, or of not less than twenty laborers and/or mechanics employed on the work shall, from time to time, reexamine the prevailing rate of wages being paid to mechanics and/or laborers for work of a similar character in the District of Columbia, city, town, village, or other civil subdivision of the State in which all or a principal part of the work is located, and if such rate is found to be increased or decreased from that stated in the specifications and made a part of the contract, he shall notify the contractor thereof, and the contractor and his subcontractors shall pay not less than the rate of wages stated in said notification from the beginning of the next pay period following the date of receipt of such notification. In event the rate of wages contained in the specifications

is so increased, an amount equal to the amount of such increase in wages in any one month shall be paid at the end of such month to the contractor by the United States upon a satisfactory showing by the contractor as to the amount thereof, and in the event of a decrease in the rate of wages the contract price shall be decreased by the amount of such decrease in wages, and such decrease in the contract price shall be computed on the basis of satisfactory evidence submitted by the contractor. The books and pay rolls of the contractor and his subcontractors shall be so kept as to show the actual wages paid mechanics and laborers, and shall be open to inspection by an authorized officer or employee of the United States.

"SEC. 2. Any contractor or subcontractor who fails to pay not less than the rate of wages stated in the advertised specifications and made a part of the contract, or not less than any rate of wages subsequently ordered in writing by the Secretary of Labor in accordance with section 1 of this act, or who, after making proper payment, requires a laborer or mechanic to refund any part of the wages so paid, shall forfeit to the United States the sum of $10 per day per laborer or mechanic for every day any laborers or mechanics are paid less than such prevailing rate of wages, and for each such refund required from any mechanic or laborer, shall forfeit to the United States a sum not less than five times the value thereof. Any laborer or mechanic employed on any such work who accepts a rate of wages less than that prescribed in the advertised specifications, or in any subsequent revision thereof made by the Secretary of Labor, or who makes any refund to the contractor or subcontractors shall, within ten days after such payment or refund, file a sworn statement with the Secretary of Labor setting forth the facts, and any amounts to be forfeited as provided in this section shall be deducted by the Comptroller General from any sums due the contractor from the United States, or if nothing remains due the contractor, such amounts may be recovered by the United States as a debt in a suit at law against either the contractor and his surety or his subcontractors. The amounts so forfeited or recovered shall be applied, first, to the payment to the laborers and mechanics of any difference between the amounts found by the Comptroller General to have been paid them and the prevailing rate of wages, or of the amounts which such laborers and mechanics were required to refund, and the balance shall be covered into the Treasury as miscellaneous receipts.

"SEC. 3. When any of the departments or independent establishments of the United States, including the District of Columbia, perform work by Government plant and hired labor which could have been performed under contract, but not including work in arsenals or navy yards, such departments and establishments, including the District of Columbia, shall also pay not less than the prevailing rate of wages as established by the Secretary of Labor at the time the work is undertaken. If, however, the work contemplated requires more than three months for its completion, the Secretary of Labor, at the request of the head of the department, independent establishment, or other agency of the Government concerned or of not less than twenty laborers and/or mechanics employed on the work, shall from time to time re-examine the prevailing rate of wages being paid to laborers and mechanics for work of a similar nature in the city, town, village, or other civil subdivision of the State or the District of Columbia, in which all or a principal part of the work is located, and if such rate is found by him to have increased or decreased he shall notify the head of the department, independent establishment or other agency of the Government concerned, who shall pay not less than the rate of wages stated in said notification from the beginning of the next pay period following the date of receipt of such notification."

SEC. 2. If the provisions of section 1 of this act, or the application thereof to any person or circumstances, shall be held invalid, the act of March 3, 1931, or the application thereof to any such person or circumstances, as the case may be, shall not be affected by the enactment of this act.

The CHAIRMAN. We were to hear a gentleman from Chicago who wanted to come in this morning, but he is not present. He is an opponent of the bill. We will hear the proponents of the bill first, and then the opponents of the bill.

We will hold hearings tomorrow on the Black bill, which is an entirely different bill. We will have to go ahead with the hearings on S. 3847 this morning, and we will then postpone these hearings until we can finish up with the Black bill. We will now hear the proponents of this bill.

Mr. EDWARD J. HARDING. I represent the Associated General Contractors of America, as managing director. Are the hearings on S. 3847 to be postponed?

The CHAIRMAN. You will have all the time you want. I did not mean that we would postpone this hearing at all. The committee will be glad to give the proponents and the opponents all the time they want, but we have arranged for a hearing on the Black bill to-morrow. Doctor Black can only come down on Fridays and Saturdays, and we have set Friday for a hearing on that bill. He is to be heard then, that having been arranged about three weeks ago.

Mr. HARDING. I wanted to ask that question, Mr. Chairman, because if that was the case we would introduce our testimony in the record rather than read it.

With your permission, I would like to introduce as our first witness to the committee, Mr. Henry J. Kaiser, who will appear as president of the Associated General Contractors of America.

STATEMENT OF HENRY J. KAISER, PRESIDENT OF THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA (INC.)

Mr. KAISER. Mr. Chairman, I will read the testimony that we desire to submit, as follows:

In view of the testimony and evidence that has been introduced by the Associated General Contractors of America on the subject of prevailing wage legislation, before both this committee and the Senate Committee on Education and Labor, it hardly seems necessary that we encumber the record of these hearings on S. 3847, the Metcalf bill, with a duplication of that testimony and evidence, or that we should attempt to amplify the record of the former hearings with voluminous additional evidence.

Our stand in this matter now should be clearly understood by all of you. It is that in the administration of any law requiring the payment of a "prevailing rate of wage," that rate should be predetermined and made a part of the specifications for every contract so that all bidders may definitely know just what will be officially considered the prevailing wage and be in a position to bid accordingly. The Metcalf bill (S. 3847) provides just that—a fair basis for the intelligent estimating of labor costs by contractors on all Government work. We are convinced that common sense, good business principles, and justice demand such a procedure.

Furthermore, we are not alone in our belief that predetermination is absolutely essential to a fair and effective administration of such regulatory legislation. Local labor union officials have indorsed it. The Senate of the United States has adopted that viewpoint without one dissenting voice, and not one of you gentlemen of the committee whom we have contacted, nor even the avowed opponents of that principle, have had the conscience to argue against the soundness and fairness of it. Paradoxically enough, we are faced with the situation of having the very gentlemen who refuse to adopt our suggestions as to having predetermination incorporated into the law tell us that they personally believe our position in the matter to be right. Of course, our position is right. No man has and no man can sanely argue against it. General Cox, of Raleigh, N. C., who is here with

us this morning, at the hearings on S. 3847 before the Senate Committee on Education and Labor, summarized the position in which the supporters of this bill find themselves as follows:

> I listened with considerable interest to the first witness's testimony (that of Mr. W. C. Hushing, legislative representative of the American Federation of Labor) this morning and failed to find where he had any objection or any suggested change in this bill to offer. If there is anything wrong with it, of course the contractors would like to know just as much as anyone else.

We have preached and argued for predetermination for more than a year and have failed to draw forth one single argument in rebuttal. Those who oppose the adoption of the principle of predetermination, oppose it by a mere thumbs-down attitude. True, an attempt was made to attack it upon constitutional grounds, but the attempt was so feeble and its basis so flimsy that it fell by its own weight and resulted in the Senate Committee on Education and Labor—which includes in its membership six eminent lawyers—unanimously vouching for the bill's constitutionality in its report on the measure.

In that report (S. Rept. No. 509) which I ask to have incorporated in the record, the Senate committee declared that:

> The early enactment of this legislation is absolutely necessary in fairness to labor and the contractors.

It summarized its conclusions as to the bill, as follows:

> 1. This bill is necessary to the intelligent, economical and efficient negotiation of contracts for public buildings.
> 2. It will be of tremendous benefit to labor.
> 3. It will remove labor troubles on public contracts.
> 4. It will enable contractors to bid intelligently and reduce the cost of public construction.
> 5. It is constitutional.

Acting on this report the Senate on April 18 passed the measure without debate.

The measure now comes to you for your consideration and recommendations and the Associated General Contractors is perfectly willing and anxious to have the measure stand on fall on the evidence that has heretofore been given or which may be given at this hearing. We have fought openly and above board for its encatment, have laid our cards on the table and ask only that this committee consider and dispose of the bill in the light of the testimony and evidence that has been openly offered and made a part of the record. If this is done, we are confident that S. 3847 soon will be on the statute books, to the mutual benefit of labor, responsible contractors and the public.

In presenting our case before the Senate committee, we undertook to establish seven basic arguments in favor of the enactment of S. 3847, which we developed not only with our own testimony but with the testimony of members of Congress, high Government officials and spokesmen of organized labor itself. These seven points were as follows:

First. That the present prevailing wage law was hastily enacted as emergency legislation, with the tacit understanding that its imperfections and inherent weaknesses would be corrected by this Congress;

Second. That the fundamental weakness of the Davis-Bacon law in itself, and as supplemented by the Executive order of January 19, 1932, lies in its failure to establish what shall constitute a "prevailing rate of wage" in a given locality, or to lay down a definite rule whereby such fact is to be impartially and accurately ascertained;

Third. That there exist honest and irreconcilable differences of opinion as to what facts should be considered in arriving at a determination of the prevailing wage rate;

Fourth. That these differences of opinion make it necessary in the interest of fairness to both the contractor and laborer that there be a predetermination as to what shall constitute the prevailing wage rate for each contract so as to remove all uncertainty as to this important fact;

Fifth. That the uncertainty attending postdetermination of the prevailing wage under the Davis-Bacon law at present is working hardship and injustice upon the responsible general contractor and is discouraging the better class of contractors from competing for Government work;

Sixth. That an average of one dispute a day in regard to the prevailing wage law has been referred to the Department of Labor during the first nine months of the law's operation, and that dissatisfaction with the manner in which the law operates has been freely expressed by both employers and employees alike;

Seventh. That the bill, S. 3847, introduced in the United States Senate on February 26, 1932, by Senator Jesse H. Metcalf, and now being considered by this committee, will remedy the present glaring weaknesses that have been revealed in this legislation, will fortify the statute against its present vulnerability on constitutional grounds and will extend and assure to labor the benefits contemplated in the original legislation, but which to date have not been satisfactorily achieved.

Opponents of the bill did not see fit to challenge the truth of a single one of these seven premises which in the aggregate, and unchallenged, clearly prove the crying need of this legislation. If anyone is prepared to specifically challenge any of these seven points, it seems to us that now is the time to do it. Otherwise, we believe our case is proved and that it is the duty of this committee in fairness to labor, the contractor, and the public interest to favorably report this measure to the House without delay.

We believe furthermore that any representation in regard to this legislation, which is to have any bearing upon the ultimate disposal of the bill by this committee, should be openly stated at this time.

We have devoted considerable time and effort in following this legislation and presenting our evidence and views in an above-board manner and we believe that the bill is to be considered on its merits, that the opposition has had ample time to prepare its specific arguments, publicly present them and afford us an opportunity to rebut them.

The substance of the entire argument of the opponents of this bill, thus far, is contained in a 65-word statement of Mr. W. C. Hushing,

legislative representative of the American Federation of Labor, at the Senate hearings. With your permission I will read it as follows:

> We feel it (S. 3847) is an attack on our prevailing rate of wage law as it now exists, and that if this is written into it, it will be declared unconstitutional, because you can not set wages in private industry by law, which is what this bill does. The Illinois Supreme Court has so held in the Illinois law just last summer. That is our objection.

If that does constitute the sum and substance of the opposition to this bill, which a perusal of the previous hearings clearly indicates, then we are prepared to set at rest the misgivings of the opponents at once. We will prove, as we did to the satisfaction of the Senate, that the question of predetermination did nor enter into the court's consideration of the Illinois law at all, despite the statement of Mr. Hushing to the contrary. As evidence of that fact we quote the conclusion of the court as follows:

> The foregoing review, without considering other objections to the act, sufficiently shows that it is not only uncertain and indefinite in its provisions, but that it is also incomplete and delegates legislative powers by allowing administrative officers to supply many of its substantial features. Accepted rules of construction applied in certain sections will not avail to disclose the legislative intent, and courts are powerless to supply the omissions of the act. No person, by reading the act, will know with a reasonable degree of certainty what rights it confers and what duties or obligations it imposes. The act is void.

We submit to you gentlemen that the above-quoted court decision is much nearer being applicable to the present Davis-Bacon law and the Executive order of January 19, 1932, than to the proposed amendment before you. The decision says of the law "that it is also incomplete and delegates legislative powers by allowing administrative officers to supply many of its substantial features." That is the very argument that we are using against the Davis-Bacon Act and the Executive order, and the very thing that we propose to overcome by the Metcalf bill. We want to overcome the existing indefiniteness and uncertainty of the present law, which is working such hardship and injustice upon responsible general contractors. As to the applicability of the Illinois decision to the Executive order of January 19, 1932, it would seem to us that the Executive order does delegate legislative powers to administrative officers to supply many of the law's substantial features.

You gentlemen will recall that this question also was in your mind when Secretary of Labor Doak announced the order here on January 21. It was very clear at that time that there were serious doubts in the minds of Representatives Kopp, Keller, and Lovette, and I believe the chairman, as to its legality. Representative Lovette at that time admonished you "to get it in mind that the Congress of the United States makes the laws and the Executive executes the laws and the courts interpret the laws."

"If we have trouble with the law," he said, "or a complaint that ought to be cured by law, it is up to this committee to pass a law to correct that situation in harmony with the Constitution, if we can, and then it is up to the Executive, if possible, to execute that law and not to interpret or amend it in any way." We believe that to be sound dictum and heartily concur in it.

We also recall that Representative Kopp specifically requested Secretary Doak to furnish the committee with a legal brief as to the

legality of the additions made by the Executive order, but the record fails to show that the Secretary of Labor, or any one else, ever complied with the request. Whether these doubts have been reconciled in the minds of you gentlemen, we do not know, but we, ourselves, still gravely entertain them.

The Secretary of Labor did, however, submit to the committee a brief on the Illinois Supreme Court decision and we invite your attention to the fact that the only mention in that brief to predetermination was as follows:

> * * * although the court mentioned that the contract was to contain a stipulation as to the prevailing rate of wages and that the rate was to be preascertained and stated in the advertisement for proposal for the work, the court apparently gave no importance to that feature of the law.

Mind you, this is an excerpt from a brief prepared for this committee under the direction of the Secretary of Labor, and yet the opponents of the Metcalf bill have gone on record as basing their opposition to predetermination upon the Illinois decision. Obviously, their spokesman before the Senate committee was totally ignorant of the contents of that decision and his objections were rightfully overruled by the Senate.

Mr. Hushing also stated, as I have previously quoted, that the Metcalf bill would by law set wages in private industry in violation of the Constitution. That is not the fact, for the Metcalf bill does not involve nor commit the Government to price fixing. Neither the Davis-Bacon Act nor this bill contemplates that the Government shall go into a community and artificially raise the prices above those prevailing in that community. The terms of the Davis-Bacon law and this bill very clearly use the phrase "prevailing rate of wages" in other words, instead of fixing wages, as actually has been done under the Davis-Bacon Act, and contrary to its terms, the law contemplates that the officer named therein shall find as a fact the prevailing wages which are being paid. The Metcalf bill is the farthest from a price fixing bill. On the other hand, it merely places a requirement on the department to state as a fact that the rate of wages which prevails in the community where the work is to be performed and in the same manner and to the same extent that the departments are now required by law to name in their specifications the kind or class and grade of material that enters in the construction of the building.

Coming to the contention of Mr. Hushing that enactment of the Metcalf amendment would jeopardize the validity of the Davis-Bacon Act, we say that to the contrary it will bolster the act in the eyes of the courts, which have consistently viewed indefiniteness and uncertainty as fatal weaknesses. But even if the bill's opponents will not concede this, Senator Robert M. La Follette, who is certainly just as staunch a friend of labor as any member of this Congress, has safeguarded the present law from attack on the basis of the Metcalf amendment by submitting an amendment of his own which has been included in the Senate bill as section 4. This amendment, as you will note, reads as follows:

> SEC. 4. If the provisions of section 1 of this act, or the application thereof to any person or circumstances, shall be held invalid, the act of March 3, 1931, or the application thereof to any such person or circumstances, as the case may be, shall not be affected by the enactment of this act.

You will see, therefore, that the enactment of this predetermination amendment, which we content is so sorely needed, would in no way tend to invalidate the Davis-Bacon law.

With this formal statement which we have just made, together with the previous testimony and evidence which we have presented to this committee and that of the Senate, the Associated General Contractors feel that they may well rest their case on the record. We have endeavored to meet the cloudy objections that have been half-heartedly raised against this bill and we are prepared now to meet any specific objection that the opponents of this measure may care to raise either in regard to the merits of the bill or as to the soundness and accuracy of the statements that we have made in its behalf. In the absence of the introduction of some new objection, however, and with our seven basic arguments unchallenged and supported by the preponderant amount of evidence which is a matter of record, we feel that this committee should not hesitate to quickly report this measure to the House and strive for its enactment so that deferred justice may be served and the real purposes of the original legislation secured.

Now, with regard to the constitutionality of the act:

Objection has been made to the Metcalf bill, S. 3847, on the ground that it is inconstitutional. Mr. W. C. Hushing, legislative representative of the American Federation of Labor, in the hearings on this bill before the Committee on Education and Labor of the United States Senate on March 17, 1932, said in part:

> There is a difference in a rate covered by a contract and a rate predetermined by law which is not in the contract; and there is where the unconstitutionality of the thing comes in. That is one of the reasons why the prevailing rate of wage law in the State of Illinois was declared unconstitutional.

The fact is that the Supreme Court of Illinois in its opinion filed December 17, 1931, did not specifically pass on the validity of the principle of predetermining the wage. It did declare the statute void because of some of the methods provided in the law but in particular on account of the ambiguities and uncertainties which it embraced. In proof of our contention in this regard I quote herewith from the Illinois Supreme Court decision:

> * * * In our view it will be necessary to consider only the contentions that the act is void because it is uncomplete and uncertain and that it delegates arbitrary power in violation of the fundamental law.
>
> The foregoing review, without considering other objections to the act, sufficiently shows that it is not only uncertain and indefinite in its provisions, but that it is also incomplete and delegates legislative powers by allowing administrative officers to supply many of its substantial features. Accepted rules of construction applied to certain sections will not avail to disclose the legislative intent and courts are powerless to supply the omissions of the act. No person, by reading the act, will know with a reasonable degree of certainty what rights it confers and what duties or obligations it imposes. The act is void.

It happens, however, that on the very day the United States Senate, without a dissenting vote, passed the Metcalf bill, S. 3847, the Supreme Court of California made public its decision on the California prevailing wage law. I have here a complete copy of that decision which I shall ask to be included as part of the record of this hearing. The California Supreme Court as in contrast to the Illinois Supreme Court went into great detail to discuss these points: The prevailing rate of wages, work of similar character, and the locality

in which the work is performed. A study will show that the wording of the California law is almost identical with that of the Metcalf bill (S. 3847). The California Supreme Court held the California law constitutional. In referring to the Illinois case which has been cited as a good reason for judging the Metcalf bill as unconstitutional the court said:

> The Illinois case (Mayhew *v.* Nelson, supra) did not discuss or notice the more recent decision upholding prevailing wage statutes. No doubt it was correctly decided, for there is in that statute a provision not found in our own—an unlawful delegation of authority to determine the current wage by a board composed in part by one not a public officer.

The court further stated the contention that the phrase "work of a similar character" is too vague to permit definition would seem to be without substantial merit.

I would urgently recommend that any member of this committee who is at all in doubt about the constitutionality of the provisions of S. 3847 carefully read the Supreme Court decision in the California case which had before it and gave consideration thereto the supreme court decision of the State of Illinois on the Illinois prevailing wage law.

I will submit all of this decision for the record.

The CHAIRMAN. Without objection, it will be incorporated in the record.

(The decision referred to is as follows:)

TEXT OF COURT'S OPINION IN METROPOLITAN DISTRICT CASE

(L. A. No. 13498. The Metropolitan Water District of Southern California, a public corporation, petitioner, *v.* W. P. Whitsett, as chairman of the board of directors of the Metropolitan Water District of Southern California, respondent)

This is an application for a writ of mandate to compel the respondent, as chairman of the board of directors of the petitioner district, to sign a contract for the construction of Entrance Hill Road, located in Riverside County, and to be used in conjunction with the Colorado River Aqueduct.

After notice inviting proposals, the contract was duly awarded to Martin Bros. Trucking Co. The particular work to be performed is the construction of about 6.45 miles of graded road, involving approximately 44,000 cubic yards of excavation, with appurtenant metal-pipe culverts, concrete protection walls, and related work.

The respondent has refused to sign the contract because the petitioner did not ascertain and specify in its notice inviting proposals and insert in the contract, the general prevailing rate of per diem wages in the locality in which the work is to be performed for each craft or type of workman or mechanic deeded to execute the contract, as required by the provisions of an act passed by the legislature and approved by the governor in 1931. (Stat. 1931, p. 910). This enactment is referred to as the public wage rate act of 1931.

Section 1 of the act provides:

"Not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed * * * shall be paid all laborers, workmen, and mechanics employed by or on behalf of the State of California, or by or on behalf of any county, city and county, city, town, district, or other political subdivision of the said State engaged in the construction of public works, exclusive of maintenance work, laborers, workmen, and mechanics employed by contractors or subcontractors in the execution of any contract or contracts for public works * * * shall be deemed to be employed on public works."

Section 2 provides:

"The public body awarding any contract for public work * * * shall ascertain the general prevailing rate of per diem wages in the locality in which the work is to be performed for each craft or type of workmen or mechanic

needed to execute the contract, and shall specify in the call for bids for said contract, and in the contract itself, what the general prevailing rate of per diem wages in the said locality is for each craft or type of workman needed to execute the contract * * * and it shall be mandatory upon the contractor to whom the contract is awarded, and upon any subcontractor under him, to pay not less than the said specified rates to all laborers, workmen, and mechanics employed by them in the execution of the contract. The contractor shall forfeit as a penalty to the State or political subdivision, district, or municipality on whose behalf the contract is made or awarded $10 per day for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, such laborer, workman, or mechanic, is paid less than the said stipulated rates for any work done under said contract, and the said public body awarding the contract shall cause to be inserted in the contract a stipulation to that effect. It shall be the duty of such public body awarding the contract, and its officers and agents, to take cognizance of complaints of all violations of the provisions of the act * * * and, when making payments to the contractor of moneys becoming due under said contract to withhold and retain therefrom all sums and audits which shall have been forfeited, pursuant to the herein said stipulation and the terms of this act: *Provided, however,* That no sum shall be withheld, retained, or forfeited, except from the final payment, without a full investigation by either the division of labor statistics and law enforcement of the State department of industrial relations or by said awarding body * * * .

Section 3 provides:

"The contractor and each subcontractor shall keep, or cause to be kept, an accurate record showing the names and occupations of all laborers, workmen, and mechanics employed by him in connection with the said public work and showing also the actual per diem wages paid to each of such workers, which record shall be open at all reasonable hours to the inspection of the public body awarding the contract, its officers and agents, and to the chief of the division of labor statistics and law enforcement of the State department of industrial relations, his deputies and agents."

Section 4 provides:

"Construction work done for irrigation, utility, reclamation, improvement and other districts, or other public agency, agencies, public officer or body * * * shall be held to be public works within the meaning of this act. The term 'locality in which the work is performed' shall be held to mean the city and county, county or counties in which the building, highway, road, excavation, or other structure, project, development or improvement is situated in all cases in which the contract is awarded by the State, or any public body thereof, and shall be held to mean the limits of the county, city and county, city, town, township, district, or other political subdivision on whose behalf the contract is awarded in all other cases. The term 'general prevailing rate of per diem wages' shall be the rate determined upon as such rate by the public body awarding the contract, or authorizing the work, whose decision shall be final."

Section 5 provides: "Any officer, agent, or representative of the State of California, or of any political subdivision, district or municipality thereof, who willfully shall violate, or omit to comply with, any of the provisions of the act, and any contractor or subcontractors, or agent or representative thereof, doing public work as aforesaid, who shall neglect to keep or cause to be kept, an accurate record of all of the names, occupations and, actual wages paid to each laborer, workman and mechanic employed by him, in connection with the said public work, or shall refuse to allow access to same at any reasonable hour to any person authorized to inspect same under this act, shall be guilty of a misdemeanor * * *," and be punishable as such.

THREE POINTS AT ISSUE IN CASE

It is contended by the petitioner (1) that said act is void for uncertainty; (2) that the burden thus attempted to be imposed upon the petitioners is in violation of section 12 of Article XI of the State constitution; and (3) that the act makes an invalid delegation of legislative power. The points will be determined in the order above named, with some preliminary discussion as to the status of the petitioner district and the purposes of the act.

The petitioner, Metropolitan Water District of Southern California, is a public corporation, organized and existing under the metropolitan water district act. (Stats. 1927, p. 694.) The purpose of its organization was to acquire the right to and to conduct water from the Colorado River for distribution to the municipalities within and a part of the district for domestic and other useful purposes. The cities within the district are numerous, some organized and existing under freeholders charters and some under general law. The district has broad powers in connection with the object of its creation, including the power, by vote of the electors in the district, to issue and sell bonds; to levy and collect general taxes within the participating municipalities; to acquire water and other rights and property; to perform construction work; "to enter into contracts, to employ and retain personal services * * * and employ laborers;" and generally to do and perform all things necessary to carry out the purposes of the district under the act. The governing body of the district is a board of directors, consisting of at least one representative from each municipality, the area of which shall lie within the district. The validity of the act approved by this court in city of Pasadena *v.* Chamberlain (204 Cal. 653). It was therein declared that notwithstanding the rights and powers of the freeholders charter cities within the district under section 6 of Article XI of the Constitution, the general purposes and objects to be subserved by the organization of a district under the act are not municipal affairs. Following its organization the electors thereof, at an election duly held for that purpose, approved a bond issue of upwards of $220,000,000 and the district is now proceeding to carry out its objects and purposes by the letting of contracts for public work, one of which is the particular contract in question.

Under the law the petitioner finds itself a public instrumentality of legislative creation whose powers and duties may be enlarged, restricted, or abolished at the will of the legislature which possesses all the powers of the sovereign not expressly withheld by the constitution. Except as restricted by the constitution, the legislature has absolute control over this corporation and its affairs. The legislative power of regulation and control over the affairs. The legislative power of regulation and control over the affairs of the district include the power to prescribe the conditions under which the State will permit public work to be done. It is immaterial whether the State undertakes the work itself or has invested one of its governmental agencies or instrumentalities with power to do it. (Atkin *v.* Kansas, 191 U. S. 207; Heim *v.* McCall, 239 U. S. 175.) Indeed, it is fairly conceded by the petitioner that the district is subject to the control of legislative enactments within constitutional limitations. We then pass to a consideration of the several claims that the act under attack is unconstitutional and void.

CLAIM ACT VOID FOR UNCERTAINTY

It is first asserted that the enactment is void for uncertainty (*a*) in that the phrase "general prevailing rate of per diem wages" is not and can not be stated as a definite amount, (*b*) in that the phrase "work of a similar character" is too vague to permit definition, and (*c*) in that the phrase "in the locality in which the work is performed" is in itself uncertain and is rendered less certain by the attempt made in the act to define it. It is therefore argued that, in view of the penal provisions of the act, neither the officers of the district nor the contractors with the district may know in advance with sufficient certainty whether any act performed by them is in contravention of the statute. In this connection it is of prime importance to note what is required by the act, the nonperformance with which or the omission to do which is made a penal offense. As applied to officers of the district, it is made a misdemeanor for any officer or agent of the district willfully to violate or omit to comply with the requirements of the act. When we point to duties imposed upon such officers and agents we find that they are required to ascertain the "general prevailing rate of per diem wages in the locality in which the work is to be performed, for each craft or type of workman needed to execute the contract." The "general prevailing rate of per diem wages" is defined to be the rate determined upon by the public body awarding the contract, and the decision of such body is made final and conclusive. When the board of directors, as in this case, made its decision on this matter, it has performed its duty in the premises, and it must be presumed that it will perform such duty honestly, fairly, and to the best of its ability upon investigation, in good faith, and with due regard to the rights of the workmen to be employed and the taxpayers of the district. When this final decision is made no uncertainty would arise in the requirement that the schedule of rates of wages be inserted in the call for bids and in the contract itself. Nor would any uncertainty be encountered in entertaining complaints as to violations by the contractor of the terms of the contract, nor in determining upon investigation what if any deductions should be made from the final payment to the contractor by reason of such violation. When these duties are performed the statute has been complied with

by the public officers and when performed in good faith no criminal or other liability may be involved against them.

DUTY PLACED ON CONTRACTOR DEFINITE

The duty imposed on the contractor, subcontractor, or agent or representative thereof is that an accurate record be kept of the names, occupations, and actual wages paid to each laborer, workman, and mechanic employed by him and that access to this record be available at any reasonable hour to the public officer or his representative authorized under the act to inspect the same. There is no uncertainty in the duties thus imposed, and an offense against the statute in this regard is clearly defined. There is no efficiency in the contention that the terms of the act relating to criminal liability and penalties are so vague that men of common intelligence must necessarily guess at their meaning and differ as to their application. The petitioner places its main reliance in this connection upon the cases of Connally *v.* General Construction Co. (269 U. S. 385), State *v.* Garfield Building Co. (Ariz.) (3 Pac. (2d) 983), and Mayhew *v.* Nelson (Illinois), (178 N. E. 921). The Connally case involved the validity of a statute of Oklahoma which provided that laborers, workmen, mechanics, etc., on public work should be paid "not less than the current rate of per diem wages in the locality in which the work is performed."

The duty was placed upon the contractor to determine, at the risk of incurring criminal liability and cumulative penalties, both the current rate of wages and the locality in which the work was to be performed. On the record in that case it was disclosed that wages in differing amounts being paid by the contractors for the same kind or class of work in the vicinity of the town of Cleveland where the work was performed. It was held that the statute presented a double uncertainty, first as to what was the "current rate of wages," and secondly as to the "locality" in which the work was performed. To quote the language of the Supreme Court of the United States:

"The words 'current rate of wages' do not denote a specific or definite sum, but minimum, maximum, and intermediate amounts, indeterminately, varying from time to time, and dependent upon the class and amount of work done, the efficiency of the workman, etc., as the bill alleges is the case in respect to the territory surrounding the bridges under construction. The statutory phrase reasonably can not be confined to any of these amounts, since it imports each and all of them. The 'current rate of wages' is not simple, but progressive—from so much (the minimum) to so much (the maximum), including all between; and to direct the payment of an amount which shall not be less than one of several different amounts, without saying which, is to leave the question of what is meant incapable of any definite answer. * * * To construe the phrase 'current rate of wages' as meaning either the lowest rate or the highest rate or any intermediate rate, or, if it were possible to determine the various factors to be considered, an average of all rates would be as likely to defeat the purpose of the act as to promote it."

The court also held that the word "locality" also too indefinite, elastic, and uncertain to satisfy the requirements of a criminal statute.

ARIZONA AND ILLINOIS DECISIONS

The case of State *v.* Garfield Building Co. (3 Pac. (2d) 983) involved the validity of a criminal statute of Arizona providing that "not less than the current rate of per diem wages in the locality where the work is performed shall be paid to persons doing manual or mechanical labor so employed by or on behalf of the State or any of its political subdivisions:" The county attorney of Pima County informed against a contractor engaged in the construction and alteration of a public school building on account of his failure and refusal to pay his employees the current rate of wages. The supreme court of Arizona followed the ruling in the Connally case and declared the statute unconstitutional on the ground that it was too indefinite and uncertain in its terms to impose a criminal liability on the contractor bound under its terms to determine himself what the current rate of wages was.

In the case of Mayhew *v.* Nelson (178 N. E. 921) an Illinois statute, effective July 1, 1931, and purporting to regulate the wages of mechanics and laborers employed under contracts for public works was attacked by a taxpayer who sought to enjoin the execution of a State highway improvement contract on the ground that the statute was vague and uncertain in its terms, incomplete and

defective in its provisions, lacking in the means of enforcement and therefore invalid; also that it delegated absolute or unlimited and arbitrary power to administrative officers and boards, and numerous other grounds not necessary to be noted. The statute is set forth in full in the opinion and is strikingly similar to the California statute in two respects: First, in that every contract in which the State or any political subdivision thereof is a party, with reference to the performance of public work, shall contain a provision that not less than the prevailing rate of wages for work of a similar nature in the city, town, village, or other civil division of the State in which the public work is located, shall be paid to the laborers and mechanics employed on said work by the contractor of the subcontractor, and that the prevailing rate of wages shall be inserted in the advertisement for bids; and secondly, that the prevailing rate of wages shall be determined by the public body in the case of any contract let. Provision is then made for objection by the taxpayers to the wage schedule thus fixed and a determination of their complaint by the director of labor. An appeal to an appeal board from the determination of the director of labor is then provided for. The appeal board is composed of certain designated public officials and the president of the largest federated body of organized labor in the State designated by the director of labor. The finding of the appeal board is made "subject to a review by the courts as justice may require." The statute was held invalid on the ground that it prescribed no test of standard by which the prevailing rate of wages in a particular jurisdiction may be ascertained; that no guide is offered by which wage rates may be determined when the work contemplated extends from one subdivision of the State into or through another, and that no mode or method is provided for the determination of appeals to the appeal board or for a revision in the courts.

RESPONSIBILITY FOR FIXING WAGE

In the Connally case and in the case of the State *v.* Garfield Building Co., it is observed that the statutes therein involved imposed the duty on the contractor to determine at his peril the current rate of wages, and the locality in which the work was to be performed was not defined. In the California statute the prevailing rate of wages, which must be deemed the same as the current rate of wages, is determined by the public body awarding the contract, and the locality to be considered in fixing the rate of wages is also defined. The statute in the Mayhew case provided, as here, that the public body awarding the contract should determine the rate and the "locality" was designated. The Illinois court based its decision on its own reasoning and cited as authority for its conclusions two cases in its own jurisdiction and the case of People ex rel. Rodgers *v.* Coler (166 N. Y. 1), without regard to the fact that the Coler case was distinguished and not followed in the later case of Ryan *v.* City of New York (177 N. Y. 271), where the New York statute providing for the payment of "not less than the prevailing rate" of wages in the locality, was sustained. The majority of the court in the Coler case held the statute invalid as an invasion of the constitutional rights of the city of New York and as a denial of the liberty of contract on the part of the contractors, and a denial of due process of law when the privilege of hiring labor on any terms obtainable was obstructed or withdrawn. The case was decided in 1901. In 1903 the question of the validity of a Kansas statute prescribing a limit of eight hours or labor per day on public contracts and requiring the payment of the current rate of wages on public works based on private work of a similar character came before the Supreme Court of the United States. In Atkin *v.* Kansas (191 U. S. 207) it was decided that the statute was a valid exercise of the power of the State in providing the conditions under which it would permit its public work to be performed. In that case the court said at page 222:

"It can not be deemed a part of the liberty of any contractor that he be allowed to do public work in any mode he may choose to adopt, without regard to the wishes of the State."

It is suggested by counsel that the eight-hour provision of the Kansas statute was the subject of most of the discussion in the opinion but the "current rate of wages" provision was also involved and was not held invalid. It can not be assumed that the statute would have been sustained in its entirety if the latter provision had been invalid.

DOCTRINE IN NEW YORK CASES

The Ryan case in New York then came on in 1904, in which the court of appeals followed the views expressed by the Supreme Court of the United States in the Atkin case. Thereafter the constitution of New York was amended in 1905 specifically to provide that the legislature should have power to regulate and fix the wages and hours of labor on public work. This amendment appears to have been necessary in order to meet and overcome the effect of the holding of the court of appeals in the Ryan case that the city of New York was immune from the requirements of the statute. The prevailing wage law and the effect upon it of the constitutional amendment again came before the court of appeals in 1927 (Campbell *v.* New York City, 244 N. Y. 317; reported and annotated in 50 A. L. R. p. 1473), and the law was upheld as applicable to the city as well as the city's contractors by reason of the constitutional amendment. Notwithstanding the fact that the prevailing wage law of New York (Consol. Laws, Chap. 32, sec. 220), provided that the contract for the public work should provide that the contractor should pay the prevailing wage without a predetermination by public authority of the amount thereof and that a violation of the statute should be a misdemeanor, the court in the Campbell case (an injunction suit), concluded that a civil liability might attach even though the Connally case might stand in the way of criminal prosecution. The New York prevailing wage statute was approved in Long Island R. O. *v.* Department of Labor of the State of New York (1931) (177 N. E. 17). Here we suffer no embarrassment by reason of the claim of uncertainty in the criminal phases of the California statute for the reason that the violations of the act which are made a misdemeanor are definite, certain and unambiguous.

The doctrine of the later New York cases has been followed and approved in the State of Washington (Mallette *v.* City of Spokane, 137 Pac. 496), Wisconsin (Wagner *v.* City of Milwaukee, 192 N. W. 994; writ of error dismissed for want of jurisdiction, 266 U. S. 585), and Maryland (Sweeten *v.* State, 90 Atl. 180; Elkan *v.* State, 90 Atl. 183, affirmed in 239 U. S. 634 on the authority of Atkin *v.* Kansas, 191 U. S. 207; Ruark *v.* International Union, 157 Md. 576, 146 Atl. 797).

JUDICIAL DECISIONS FAVOR PREVAILING WAGE

A review of the many authorities cited by counsel for the parties and by amici curiæ, too numerous to be commented upon, discloses that the great weight of authority and the distinct trend of recent judicial decision is in favor of the constitutionality or prevailing wage laws as applied to public work. The Atkin case has never been expressly overruled by the Supreme Court of the United States. It was not referred to in the Connally case, the latter case is not applicable to the case at bar for the reason that here we are not confronted with any uncertainty as to the nature or character of the particular offense that is declared to be a crime. The Arizona case (State *v.* Garfield Building Co., supra), is not applicable for the asme reason. The Illinois case (Mayhew *v.* Nelson, supra), did not discuss or notice the more recent decisions upholding prevailing wage statutes. No doubt it was correctly decided for there is in that statute a provision not found in our own; an unlawful delegation of authority to determine the current wage by a board composed in part by one not a public officer; and the reference by the court to the Coler case in New York was in reliance upon a case in that State which had long since been repudiated by its highest court.

WHAT IS A PREVAILING WAGE?

But, say counsel, what is a prevailing wage? No court has attempted, and properly so, to fix one in a definite amount. Precise definition of the term for all time and place is impossible. The Supreme Court of the United States has pointed out the difficulties of definition and held it too definite in a criminal prosecution. Other courts have indicated perhaps a workable definition as a matter of business administration. Its definition is relative to time and place, both of which are within the preview and cognizance of the administration board in each case. In the Ruark case (146 Atl. 797), the court of appeals of Maryland said at page 801:

"The clause, 'the current rate of per diem wages in the locality where the work is performed,' may therefore be held to mean the charge for the valuation of the daily toil of a laborer, workman, or mechanic, as the case may be, at a given labor, according to a scale or standard of money compensation then generally received or established by common consent or estimation throughout an area which includes,

not only the actual site where the public work is to be performed, but also such adjoining territory within which the compensation does prevail. The construction adopted will assure the fulfillment of the legislative intention without right or rule of law; in short, labor has its market value (citing cases). The determination of this value is a familiar problem in a suit of this quantum meruit for work and labor; and its solution is by testimony establishing the usual price for like services at the time and place of performances * * * . It is common knowledge that every contractor undertakes a public work upon the basis of the then cost of labor at the place of performance. The labor cost is usually the principal item of construction. So it is not unreasonable to impute to a contractor the knowledge which the nature of his business, and its prosecution, required him to possess, or which might have been obtained by reasonable investigation."

PREVAILING RATE FAIR MARKET VALUE

In the Campbell case (244 N. Y. 317) the court of appeals of New York said:

"This is not the time to attempt a definition of 'prevailing rates of wages' with its background of legislative history and 20 years or more of practical construction. We find it hard to believe that a cliche so inveterate is devoid of meaning altogether. Learned judges have said (citing Haight, J., in the Coler case), that it is synonomous with market value. This might not exclude altogether the possibility of functions and diversities of a given day and place. There can be little doubt that it would furnish us with criteria of conduct adequate for civil, if not for criminal, liability."

In Morse *v.* Delaney (218 N. Y. S. 571) after reviewing certain cases on the subject, the court concluded:

"We thus have a range of opinion which, while varying in expression, substantially points, with but one exception, to an interpretation of the 'prevailing rate' as the 'fair market value.'" It is for the board of directors to ascertain that value as it would the value of any other services of which the district might be in need. When it has done so, that which may have been subject to variation has become definite by the action of constituted authority.

WORK OF SIMILAR CHARACTER

The contention that the phrase "work of a similar character" is too vague to permit definition would seem to be without substantial merit. The character of the work to be performed on the proposed road or on any of the construction work to be done by the district in carrying out the object of its creation would not appear to be so extraordinary as not to permit a ready classification of the employees by resort to means of common knowledge and experience in this State. The law was intended for the benefit of the great body of laborers and mechanics to be employed on the job. There would seem to be no difficulty in classifying such employees as blacksmiths, bricklayers, carpenters, concrete-mixer operators, crane operators, hod carriers, iron workers—structural, reinforcing and ornamental—laborers, lathers, marble workers, mechanics, painters, pile-driver men, plasterers, powder men, traction operators, truck drivers, teamsters, etc. The mention of the foregoing does not, of course, exclude others, but the classifications would necessarily include those workers who, by common experience, are numerous enough that a prevailing wage may be applied to them. Just why the phrase is too vague is not specifically pointed out. The fact that the phrase is used in most of the statutes which have come to our attention and been complied with without the necessity of judicial decision on the subject is persuasive that it is not subject to the objection raised.

LOCALITY IN WHICH WORK IS DONE

Nor do we find the phrase "locality in which the work is performed" to be so uncertain as to justify noncompliance with the act. As applicable to the petitioner it must be conceded that the definition is somewhat ambiguous. As so applicable it is defined to be the city and county, county, or counties in which the improvement is to be constructed in all cases in which the contract is awarded by the state, or any public body thereof, and the limits of any city, county, city and county, city, town, township, district of other political subdivision on whose behalf the contract is awarded in all other cases. It is at once apparent that the petitioner is a public body of the state as indicated in the first portion of the

definition and it is also a district as indicated in the latter portion. The intention is plain to fix the locality where the work is to be performed. When the work is to be done partly in city and partly in county territory, or in adjoining cities or in different counties, administration of the act in this respect may become complicated and of difficult performance, but if it can be done with reasonable certainty no judicial question is presented. It is a burden placed upon the petitioner by the authority of its creation which is all embracing and all powerful in its exactions, subject only to constitutional restraints.

LAW NOT UNCONSTITUTIONAL

The next point made in support of the petition is that the burden imposed by the statute on the petitioner is in violation of section 12 of Article XI of the Constitution which provides that "the legislature shall have no power to impose taxes upon counties, cities, towns, or other public or municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal puposes, but may, by general laws, vest in the corporate authorities thereof, the power to assess and collect taxes for such purposes." It is argued that "the burden of increased cost of the public works of such district, which is bound to be caused by compliance with the prevailing wage act, is the imposition of a tax on the inhabitants and property of the district and is expressly prohibited by this section of the Constitution." The difficulty with the argument is that it assumes that the burden imposed by the statute is a tax. If it is not, the argument necessarily fails. In our opinion the burden imposed by the statute is not a tax as contemplated by the Constitution. It is essentially a minimum wage law. When the schedule of wages is determined, not less than the amounts specified therein may be paid to employees on the work. The act provides that nothing therein shall be construed to prohibit the payment to any employee on the public work of more than the prevailing rate.

MINIMUM WAGE LAWS VALID

Minimum wage statutes applicable to public work have been uniformly upheld on the theory that the State as the employer having full control of the terms and conditions under which it will contract may, through its legislature, and within constitutional limits, provide the wage which shall be paid to its employees and that the payment of a less sum shall be unlawful. In 1897 the the legislature of the State enacted a statute prescribing $2 per day as a minimum wage to be paid for labor on public works. (Stats. 1897, p. 90.) This wage may or may not have been more than the prevailing wage for labor in similar employment of that day. Apparently the validity of that statute has never been questioned, and the act was repealed in 1931. (Stats. 1931, p. 909.) Under all of the authorities cited, or which have come to our notice, it is uniformly held that the legislature itself, unless constitutionally restrained, may fix in a definite amount the minimum wage for labor on public work. Whether it may delegate authority to fix such wage to a subordinate public body subject to its control will be considered. The fact that the minimum wage prescribed, whether by the legislature itself or by a public body under its direction, may increase the cost of the work is not sufficient to characterize the exaction a tax within the meaning of the constitution. Rather, it is one of the terms and conditions upon which the legislature, exercising its lawful power, has seen fit to impose on one of its subordinate creatures, and the fact that compliance therewith may increase the cost of the work is not a matter of which the district may complain. The same argument has been advanced in attacks upon public work eight hour laws, but such contentions have been set at rest since the decision in Atkin *v.* Kansas (191 U. S. 207). Minimum wage statutes on public work have been upheld in New York, Iowa, Washington, Colorado, Oklahoma, Maryland, and Wisconsin and have been sustained by the highest court in the land. The power of the state in this respect was recognized by the Supreme Court of Arizona and the Supreme Court of Illinois did not deny it. The controversies that have arisen were focused on the method of prescribing them rather than in the power to enact them.

NOT UNLAWFUL DELEGATION OF POWERS

We now pass to the contention that the statute unlawfully delegates legislative power to the board of directors of the district. The petitioner concedes that the object to be accomplished, may be directed by the legislature to be carried

into effect by subordinate officers and bodies having better opportunities for accomplishing the object, or doing the thing understandingly, and that the legislature may delegate the power to determine some fact or state of things upon which the law makes, or intends to make, in its own action depend; but it is contended that the statute under attack in effect attempts to delegate to the board of directors the power to make the law, which involves a discretion as to what the law shall be, as distinguished from the power to exercise a discretion under and in pursuance of the law. It is argued that power to do the former may not, but power to do the latter, may be delegated. Abstractly the distinction drawn by counsel is correct. The question is, has the statute delegated to the board power to make law? When we look to the act creating the petitioner, we find very broad powers conferred on the board of directors. The board is granted the power among other things to make and pass ordinances, resolutions and orders not repugnant to the State and Federal constitutions, or the provisions of the act, and is specially granted the power to establish and fix the powers and duties and compensation of the officers and employees of the district. Unless the power thus granted to fix the salary or wages of its own employees is an unlawful delegation of power to the board, and we do not intimate that it is, or that it would be conceded by the petitioner to be unlawful, the power granted by the statute under attack to fix a minimum wage for the employees of contractors with the district would not be an unlawful delegation. The difficulty urged is one of administration, that is, in fixing the minimum. While it would be within the power of the legislature to fix in the statute a minimum in dollars and cents for the various classes of employees on public work, it would be manifestly impracticable thus to establish a scale of wages which would be fair to the State and its agencies and also to the employees affected and to remain inflexible over a period of years. If the power of the legislature to delegate the determination of this and the many other problems of administration to subordinate bodies be denied, public work might be unreasonably curtailed or brought to a standstill. (Mutual Film Corp. *v.* Industrial Commission, 236 U. S. 230.)

RESPONSIBILITY RESTS ON LEGISLATORS

It is unnecessary to cite cases to the effect that it has become a firmly established rule of law that a large measure of discretion may be delegated to administrative officers and boards. Here the determination of the board of directors is made final. This does not mean that the action of the board may be arbitrary or capricious, but the proper administration of the statute will be presumed. Difficulties in such administration are presented by way of argument, but they do not present judicial questions. It is frankly conceded by counsel for the petitioner that because the law is difficult of application and might in some circumstances work a hardship, it is of necessity, invalid. Whatever difficulties confront the petitioner in the application of the law have been imposed upon it by the legislature, the power of its creation. It is not for the courts to say that the legislature should not have so acted in a matter of so great concern. In this connection we quote the language of Mr. Justice Harlan, speaking for the court in the Atkin case (191 U. S. 207, at p. 223): "So, also, if it be said that a statute like the one before us is mischievous in its tendencies, the answer is that the responsibility therefor rests upon legislators, not upon courts. No evils arising from such legislation could be more far-reaching than those that might come to our system of government if the judiciary, abandoning the sphere assigned to it by the fundamental law, should enter the domain of legislation and upon grounds merely of justice or reason or wisdom, annul statutes that had received the sanction of the people's representatives. We are reminded by counsel that it is the solemn duty of the courts in cases before them to guard the constitutional rights of the citizens against merely arbitrary power. That is unquestionably true. But it is equally true—indeed, the public interests imperatively demand—that legislative enactments should be recognized and enforced by the courts as embodying the will of the people, unless they are, plainly and palpably, beyond all question in violation of the fundamental law of the constitution." If the statute under attack in its operation shall become too burdensome upon public agencies over which the statute is controlling, the remedy is in the hands of the legislature and not through the courts.

The peremptory writ is denied.

SHENK, J.

We concur:

Waste, C. J.; Seawall, J.; Curtis, J.; Langdon, J.; Preston, J.; Tyler, J., pro tem.

Mr. KAISER. Now, I personally want to say to the committee a very personal word. As a contractor I have operated in many States of our Union; I have operated in foreign countries, and I see in this bill (Davis-Bacon bill) what might be called almost the destruction of our industry. I really see the courts of our land cluttered with cases brought after contracts have been completed, during the course of their completion, and before their completion. I can see the courts, in my mind's eye, cluttered with cases, with litigants attempting to determine whether a contractor has payed the prevailing rate of wages. That will be the case unless it has been predetermined. That will go on for a long time, and there will be losses involved. There will be losses incurred in connection with those cases; there will be the expense of lawsuits and attorneys, and there will be involved a great loss of time. There will be losses and decisions that will absolutely destroy the individual contractor's possibilities and hopes. He will not know the conditions with those cases undecided, and the final result will be that the United States, or any part of the United States, operating under the Bacon-Davis law will be compelled to resort to but few bidders who will have the courage to take the chances. Now, when you are compelled to resort to but few bidders, because of the past history of these cases that will clutter up the courts of law, you will have to pay the price, because competition will be considerably less, as you know. The price of contract work will rise to such a point that it will become almost prohibitive. The result will, therefore, be the destruction of the industry in any case if this bill is not amended as we have contended it should be.

I thank you.

The CHAIRMAN. Are there any questions?

Mr. RAMSPECK. Your organization, as I understand it, is composed both of what we ordinarily call "closed shop" operators and "open shop" operators?

Mr. KAISER. That is correct; yes, sir.

Mr. RAMSPECK. In your study of this question, do you find that the closed shop contractors favor the predetermination as well as the open-shop contractors?

Mr. KAISER. We have very few opposed. In an organization of this kind that covers the entire United States, of course there is always a divergence or difference of opinion, but I would say that we are almost unanimously in favor of this provision. We have a few exceptions.

Mr. RAMSPECK. What proportion of your membership is open shop and what proportion is closed?

Mr. KAISER. I can not answer that question. I would like to refer that to Mr. Harding.

Mr. HARDING. The members of the association in the metropolitan districts are practically all closed-shop concerns. That is practically true in all of the larger cities. I have never broken it down that way, as to which are closed and which are open shops. As a matter of fact the Associated General Contractors have no labor policy as a national organization. Our locals in Chicago and St. Louis, for instance, have their trade agreements with the building trade councils in those cities, but as a national organization we have no labor policy.

Mr. RAMSPECK. But there are a considerable number of closed-shop contractors in your organization?

Mr. HARDING. Yes, sir.

Mr. RAMSPECK. Mr. Kaiser, what effect did the Executive order of January 19, 1932, have on the disposition of your members to bid on Government work?

Mr. KAISER. I would say that it had a very demoralizing effect.

Mr. RAMSPECK. What effect did it have on the disposition of bonding companies in the matter of furnishing bonds?

Mr. KAISER. The bonding companies, I can say to you in all frankness and honesty, tightened up terribly in regard to bonds. I can say in my own case, and I am constructing a tremendous amount of work, that never in my life had I had any difficulty with bonds; but in my case, and in the case of many others whom I know, the bonding companies at this time are requiring cash deposits, which they never before in their history required. Even when the cash is in the bank, or where you have an actual cash balance, they require that cash put up as security, whereas ordinarily they would accept other security. It may not be this provision that is causing all of it. I would say that it was not all due to that, but it has a bearing on it. The uncertainty of everything and the general conditions, of course, affect it.

Mr. RAMSPECK. Do you operate your own business individually, or through corporations?

Mr. KAISER. I operate through corporations. I have several companies.

Mr. RAMSPECK. Are your companies open or closed shop?

Mr. KAISER. My companies are open shop.

Mr. RAMSPECK. Do you know of any purpose on the part of your organization or its members to attack the union wage scale through this proposed law?

Mr. KAISER. I do not. I definitely do not. I do not see how we could.

Mr. RAMSPECK. What is the disposition of your members toward the scale of wages with reference to Government work? What I am trying to get at is this: Do you want the rates reduced, or are you willing to pay the rates if you are certain what they are?

Mr. KAISER. Of course, that varies considerably. In some of my companies, we are paying more than the prevailing rate of wages, and definitely more.

Mr. RAMSPECK. What do you consider the prevailing rate of wages?

Mr. KAISER. We consider the prevailing rate of wages to be the prevailing rate that is paid in a community.

Mr. RAMSPECK. Do you mean the average rate, or would you consider it to be the rate which has been agreed upon between contractors and the representatives of organized labor?

Mr. KAISER. I would not say that it was a matter of agreement. I would say that it was the rate prevailing there.

Mr. RAMSPECK. Then, you mean the average rate.

Mr. KAISER. I think that possibly we would vary that as to conditions. There might be some conditions where some might be paying a very low average wage, which would affect the total average, or lower it to an extent that would not be reasonable. Therefore, the average rate would not apply in those cases. Each case has to be considered on its own merits, I should think.

Mr. RAMSPECK. The argument has been made before this committee in other hearings that the only prevailing rate is the rate that has been agreed upon between the responsible parties on both sides, as for instance, between contractors, I would say, in Chicago, and the representatives of labor in Chicago, and that the other rates vary according to what you can hire men for. Therefore, the argument is that that is not the prevailing rate, but it is simply the rate that you can hire men for. What is your reaction to that sort of argument?

Mr. KAISER. Well, when they argue it is what you can get men for, you must also take into consideration the quality of the men. In the largest operations we have, our position is that if we hay a high rate, we get a better class of men. Others might not contend that.

Mr. RAMSPECK. There is one other question, Mr. Kaiser: You are familiar with the President's Executive order, are you not?

Mr. KAISER. Yes, sir.

Mr. RAMSPECK. Would you construe that order as abrogating any contract your company might have in a certain locality with organized labor? In principle, it says that any agreement a contractor may have with employees, if contrary to the President's order, must conform, or that the contractor would have to pay the rate fixed under the order and under the law, which it attempts to amend, as I construe it. Would you not construe that as abrogating any contract you may have made with organized labor?

Mr. KAISER. That is a broad question, and before I answer it, I would like to make some study of it. That is a broad question.

Mr. RAMSPECK. Have you signed any contracts with that order in it?

Mr. KAISER. Are you asking my personal opinion?

Mr. RAMSPECK. Yes.

Mr. KAISER. Then, let me get the question clearly. The question was if I signed a contract with that order in it, would I contend—will you state the question again?

Mr. RAMSPECK. Suppose you had signed a contract with the executive order made a part of it: As I understand it, the order prescribes that it shall be contained in the contract to which the law applies. Now, suppose the Secretary of Labor should fix a rate of pay lower than that you had agreed to pay in the agreement with organized labor, you would, of course, be bound to abrogate your agreement with organized labor.

Mr. KAISER. No, sir.

Mr. RAMSPECK. You do not think so.

Mr. KAISER. No, sir; when you make an agreement with me, that stands above all else. If you make an agreement with me, it stands.

Mr. WELCH. Do you know in what respect——

Mr. KAISER (interposing). That is my personal opinion. I want to say this that when you sign an agreement with me personally, that agreement stands, and it is irrevocable by any order, unless I am forced by a court to do otherwise. You were about to ask me a question, Mr. Welch.

Mr. WELCH. Do you know in what respect, if any, the President's executive order interferes with contractors?

Mr. KAISER. I would like to have Mr. Harding answer that question, because he has heard from so many other contractors that he could give you a broader view of that.

Mr. WELCH. You are operating through corporations, and you stated that you were carrying on extensive work in different sections of the country.

Mr. KAISER. Yes, sir.

Mr. WELCH. Or is it confined to California?

Mr. KAISER. Ordinarily it is in different sections of the country. At this time we have not any work outside of California, but last year we worked in about seven different States.

Mr. WELCH. What percentage of the work you are carrying on at the present time is Federal construction work?

Mr. KAISER. By the companies in which I am interested?

Mr. WELCH. Yes.

Mr. KAISER. One hundred per cent of it.

Mr. WELCH. One hundred per cent of it is Federal construction work.

Mr. KAISER. Yes, sir.

Mr. WELCH. Do you have contracts with private parties?

Mr. KAISER. We have no contracts with private parties at this moment. Last year we had contracts with various concerns. Last year we had contracts in many States, with various concerns, mainly in Iowa, Texas, and Illinois, and we had $20,000,000 worth of work in foreign countries under predetermined rates exactly as this Metcalf bill provides, and it was very satisfactory.

Mr. WELCH. The enactment of this bill into law, providing for predetermining wage rate, could have no possible effect on private work.

Mr. KAISER. No, sir. I am not sure of that, or how far it would reach.

Mr. WELCH. For instance, in the State of California, or any municipality within the State of California——

Mr. KAISER (interposing). It would have some effect upon private work. Let us assume that we are doing a tremendous amount of Federal Government work, and we have on one contract in the neighborhood of about 3,200 employees. We are bidding on other work constantly. Now, some of those 3,200 employees have been with us for 15 years. Suppose we bid on private work in that same locality, and we need those same employees on the private work: Surely we could not transfer those employees to private work at a lower rate.

Mr. WELCH. What is the character of your work generally?

Mr. KAISER. It is very broad. General construction work, including dams, buildings, pipe lines, etc. We constructed a thousand miles of pipe line across the United States last year.

Mr. WELCH. Was that Federal work?

Mr. KAISER. No, sir; that was private work. That work was done for the Standard Oil Co. of California, the Texas Corporation, and several other oil companies. We did work for the Continental Oil Co. and the Natural Gas Pipeline Co. in Montana, and for the Phoenix Utility Co. of America. We have constructed various dams and various other types of construction. In addition to that, I operate a manufacturing business which furnishes at least 50 per cent of the concrete material in San Francisco and Oakland. Therefore, I am closely in touch with all the contractors out there.

Mr. WELCH. I refer to that because your home is in California, which is my home. For instance, if you were doing work for the State of California, or for the city and county of San Francisco, or the city of Los Angeles, or Oakland, what effect would a Federal predetermined rate law have on that character of work?

Mr. KAISER. Of course, the work in the City of San Francisco would come under this law.

Mr. WELCH. Why would it come under a Federal law?

Mr. KAISER. Because it is Federal work.

Mr. WELCH. I qualified it.

Mr. KAISER. They have a law in California that is almost identical with this, or the operation is the same. It is a duplicate of this law, with this amendment. We have a prevailing wage law there.

Mr. WELCH. I know they have a prevailing wage rate in San Francisco, which is my home.

Mr. KAISER. Yes sir.

Mr. WELCH. Do they have this predetermined wage rate?

Mr. KAISER. Yes, sir; they have the predetermined clause.

Mr. WELCH. Do you have a copy of that law?

Mr. KAISER. Yes, sir; we have a copy of that law, and I have submitted a copy of the Supreme Court decision which holds that law valid.

Mr. WELCH. Is the law contained in the decision?

Mr. KAISER. There is a copy of the law in it.

Here is what happened: At the Pine Canyon Dam it was a question as to the validity of this law as to the predetermined wage. It was thought by many that the law was not valid. Labor in California stood on the question of attempting to make it valid.

Before they went ahead with the Pine Canyon Dam they secured a decision, and at the same time before the city of Los Angeles would go ahead with the metropolitan water district they also determined to go to the Supreme Court to get a decision as to the validity of the law, and in both cases there have been decisions, both in the Pasadena case and in the metropolitan water district case.

The Supreme Court has decided that that law is valid, and it is almost identical with this amendment, and the conditions under which this law will be effective if you adopt this amendment.

The CHAIRMAN. Mr. Kaiser, have you been to the Boulder Canyon Dam?

Mr. KAISER. Yes, Mr. Chairman; I am chairman of the executive committee of the Boulder Canyon organization.

The CHAIRMAN. Are you paying the prevailing rate of wage?

Mr. KAISER. We are paying higher.

The CHAIRMAN. What do you consider the prevailing rate of wage?

Mr. KAISER. In general, we pay labor from $4 to $10; I can not give you all the rates accurately from memory, but our minimum rate at this time is $4.

The CHAIRMAN. How do you account for the fact that with the Executive order in effect and with the Davis-Bacon bill in effect, they are paying 25 cents an hour on Government work in the District of Columbia here, on Government buildings, right under our noses.

Mr. KAISER. It is a lack of predetermination. You can see how occasions will come up in connection with that. We have any number of cases, and I believe that the lawyers will see the opportunity and

seize it, in this condition, of proving to numerous laborers that they can recover wages, and they will take their percentage of their recovery, and the courts will be cluttered with cases. The trouble is there is nothing definite. The contractor knows, in some cases that he is going to be broke, and he does not care. There are any number of things that you can readily assume would happen, where there is nothing definite. It is the indefiniteness of this propostion that has the destructive effect.

The CHAIRMAN. Your idea is that a contractor at a certain place will perhaps compete with a contractor in some other place, not knowing exactly what he has to pay, and will try to get by as cheaply as possible, and that if you had predetermination it would remedy that?

Mr. KAISER. Naturally; is he not human? Unless the contractor is smart, as many of them are. I may be wrong about that, because I am not so smart. If he thinks he can do it by paying more money, it is a question whether he can pay more money and get by.

But one thing is certain, when you specify the rate and he does not pay it, them some one can say, "In your contract it says so much money per hour, but you are not paying it, and your contract is canceled." He fears that. But this is so simple and so easy for everyone, that the surprising thing to me is that there is any opposition.

The CHAIRMAN. What was the reason for your association being so much opposed to the Connery bill in reference to rivers and dams, especially the provision we put in that the prevailing rate of wage in no case shall be less than the cost of living in that locality?

Mr. KAISER. I have not gone into that.

The CHAIRMAN. In a paper sent out by your organization, they laid great stress on that point, and I was wondering if the contractors were in good faith on the proposition of predetermination, what objection they would have to paying wages which can not be less than the cost of living in a particular locality. They stress that one paragraph.

Mr. KAISER. Your question is addressed to me, personally? You want my personal reflection on that?

The CHAIRMAN. Yes.

Mr. KAISER. What is the cost of living, and whose living does it mean?

The CHAIRMAN. The Secretary of Labor has statistics on the cost of living in every community in the United States.

Mr. KAISER. If you can get into anything that is definite, you can solve the problem, but when you get into an indefinite thing you can not solve it. If the Secretary of Labor would determine the cost of living, and thereby could determine the wage, the effect would be the same.

The CHAIRMAN. In addition to predetermination, would you be in favor of the Secretary of Labor predetermining what the cost of living was in any locality?

Mr. KAISER. Would it not be the same thing?

The CHAIRMAN. Pretty nearly. If you paid the prevailing rate of wages, and the Secretary of Labor decided that was the union wage, you would be above the cost of living.

Mr. KAISER. It seems to me the point would be covered by him very properly.

Mr. RAMSPECK. The contractor who wants to be fair to labor does not care what the rate is if he knows his competitor has to bid on the same basis.

Mr. KAISER. The contractor does not. We are not in any quarrel with what the rate is. We do not want to enter into that question. That is a question we should not determine.

Mr. RAMSPECK. There is one other question I would like to ask.

Mr. KAISER. If the Government is going to spend this money, it should be prepared to say how much it wants to spend, and how much it wants us to spend for labor.

Mr. RAMSPECK. On page 5, in section 3, beginning at line 16, the bill provides:

> If, however, the work contemplated requires more than three months for its completion, the Secretary of Labor, at the request of the head of the department, independent establishment, or other agency of the Government concerned or of not less than 20 laborers and/or mechanics employed on the work,

And so forth.

Would your organization have any objection to amending that so that representatives of the crafts employed on the job would have the right to request a redetermination?

Mr. KAISER. I can not see any objection to that at all. It is a little broader and possibly better. It now refers to mechanics alone; if there were no mechanics on the job——

Mr. RAMSPECK (interposing). The point I am getting at is this: There is an objection to the bill in that it shuts our the representatives of labor organizations and prevents them from requesting any change in the rate.

Mr. KAISER. We do not want to do that.

Mr. RAMSPECK. You would have no objection to amending the bill in that way?

Mr. KAISER. I think it would be an improvement.

Mr. RAMSPECK. So that the American Federation of Labor, or the representatives of any local body could request a redetermination of wages?

Mr. KAISER. I think it would be an improvement to say that any of the crafts involved could do that, if it does not refer to any particular group.

The CHAIRMAN. What about an open shop? There would be no representative of the crafts there?

Mr. KAISER. Oh, yes there would be. As I understand the word "craft" it would include any truck driver, or any craftsman who is skilled in the particular line of work performed.

The CHAIRMAN. You do not mean if you were running an open shop you would allow a representative of organized labor of the same craft in the same city to make a complaint; it would have to be somebody on your job?

Mr. KAISER. This bill, as I see it now, provides that the Government and the men employed have a conference. I do not see that we are involved in it.

Mr. RAMSPECK. As the bill now stands, the question of revising the rates of wages while the job is going on is limited——

Mr. KAISER (interposing). To mechanics and laborers.

Mr. RAMSPECK. To the men actually employed on the job and the contracting agency of the Government.

My proposition is to amend that so that the representatives of labor, whether they are union or nonunion, could also make application for a redetermination.

Mr. HARDING. I see no objection to that, that is, that the men on the job have equal rights to make that representation.

Mr. RAMSPECK. My idea would be to retain this provision and add to it that additional provision.

The CHAIRMAN. Why do you think labor is opposed to this? What is your own reaction as to why labor is opposed to it?

Mr. KAISER. Because they do not understand that it is a real benefit to them.

The CHAIRMAN. Do you think there are any other reasons?

Mr. KAISER. I do not know of any other reason, Mr. Chairman, because I can not see anything but a real benefit to it. I can not see anything but controversy the other way, controversy of every type and sort, as to men claimed to be underpaid, or overpaid, with court decisions, controversies and troubles. As I understand it, the Secretary has according to his testimony, already had one per day, and that is not a start.

The CHAIRMAN. What is the reaction of your associated general contractors? As I understand it, the real idea behind this proposition, the real reason for wanting this bill passed, is so that a contractor will know just what he has to bid on.

Mr. KAISER. So that a contractor who estimates on work can provide in his estimates the amount of money that the labor will cost.

The CHAIRMAN. You do not care what the rate is, how high it is?

Mr. KAISER. We have no quarrel with the rate at all. That is a matter between the owner, which is the Government, and labor.

The CHAIRMAN. As long as you can figure that you are on an equal basis with the other contractors?

Mr. KAISER. It is not an equal basis unless we know what we are going to pay.

Let me cite an average contract. Perhaps this is a broad statement, but this is out of my own experience. On an average contract, you will take 30 to 40 per cent for direct labor.

Let us assume that you are a contractor, Mr. Chairman. You make the estimates, and you estimate on the cost of labor. You are assuming that you can get labor at the prevailing rate, as you see it, say, at $3. Suddenly, the Government comes along and says, "No, it is $6." That is an increase of 100 per cent. You know as a contractor that 10 per cent is the normal profit that a contractor figures on.

The CHAIRMAN. Right there, may I ask you this question? How do you react to the proposition which we had before the committee when we previously discussed this, in reference to a rising scale; that a provision should be put into the bill to the effect that if the price went up the Government would reimburse the contractor, and if the price went down the contractor would reimburse the Government?

Mr. RAMSPECK. That is in this bill.

Mr. KAISER. That is in this bill. We had exactly a similar contract in a foreign country, and had no difficulty whatsoever. We reimbursed the Government.

Going back to my former statement, you can see that if they increased it 100 per cent on a third of the work you have lost 20 per cent on your contract.

It is definitely destructive, and you will think then if you are going to lose that 20 per cent, how long will you go through the courts, and what is the final result going to be.

Everyone becomes frightened and nervous.

I have in mind the instance of one State, where contractors had lost so heavily they concluded they would not bid in that State any more, and the general word was passed out, if you bid on work in that State you would be a loser. In that State the value of the work went from $4 on the major items to from $7 to $11.

And who were the bidders? There was just one bidder on 18 miles of work, and that was the result of fear and fright.

That is what you are coming to here. I can not see anything else but that. You will see the contractors saying, "Oh, well, we will get by somehow." Then they start to bid and get penalized, and after that then comes fright and fear, and then the higher bids, and where do you stand?

You say, "Well, we must have this work done," and then you pay double.

Mr. WELCH. How many men are employed at the present time on the Boulder Dam project?

Mr. KAISER. There were 3,200 on about the 15th of April.

Mr. WELCH. How many men will have to be laid off by reason of the slashing by Congress and the Senate of the appropriation recommended by the department.

Mr. KAISER. All.

The CHAIRMAN. All of them?

Mr. KAISER. Yes.

Mr. WELCH. You mean——

Mr. KAISER (interposing). The work will be closed down.

Mr. WELCH. Commencing on what date?

Mr. KAISER. I do not like to say this for publicity, because it is a very serious subject.

Mr. WELCH. It is a very serious subject, and that is why I am asking you.

Mr. KAISER. You are going into a subject that is very close to my heart, and one I am very much concerned about.

Mr. WELCH. We are seriously concerned about it, particularly those of us who live on the west coast.

Mr. KAISER. The situation is this. I will give you a few broad figures, if you will follow me.

Mr. WELCH. The department recommended an adequate appropriation to carry on that work?

Mr. KAISER. Yes.

Mr. WELCH. It was Congress and the Senate that slashed the appropriation, which will cause you to close down the work?

Mr. KAISER. The work will be closed down entirely.

The loss to the Government will equal what they have appropriated, because they will lose last year's revenue.

I will be perfectly frank with you, and I am not here to injure anyone or to do any harm. I am here to tell the facts as I believe them and know them.

The facts are that there was $31,000,000 appropriated.

Mr. STOKES. For what period?

Mr. KAISER. For the period up to June, 1933.

Mr. STOKES. From what date?

Mr. LOVETTE. How much was authorized; how much did the Government contemplate that the whole job would cost when it was done?

Mr. KAISER. I think the total job was to be something over $100,000,000.

Mr. STOKES. Does that appropriation cover one fiscal year?

Mr. KAISER. They appropriated $25,000,000 first, and the last appropriation was $6,000,000.

Mr. STOKES. That was the deficiency appropriation?

Mr. KAISER. No; that was the regular appropriation.

Mr. STOKES. Does that take effect after the 1st of July?

Mr. KAISER. That appropriation covers the period from June, 1932, to June, 1933.

Mr. STOKES. How much is that for the fiscal year?

Mr. KAISER. $6,000,000.

Mr. STOKES. For the whole year?

Mr. KAISER. That is for the whole year, plus what balance they have on hand.

Mr. STOKES. What did they appropriate last year?

Mr. KAISER. The total up to this time was $25,000,000.

Mr. STOKES. In other words, the $6,000,000 this year ought to go much further than $6,000,000 last year because of the very much lower cost of supplies, should it not?

Mr. KAISER. No; that is not the case. We are paying exactly the same rate of wages. We are paying more money this year.

Mr. STOKES. Why do you say that, when material and labor is lower?

Mr. KAISER. We are talking about labor now. The material is a very broad question. We manufacture a great deal of our material, and purchase the shovels and machinery. That varies according to what the cost might be of that particular article at the time.

Mr. STOKES. As has been said, we are talking about economy, and surely it is important that Government work be done as cheaply as any other work, consistent with fair play.

The CHAIRMAN. Fair play is the word; but if it means starvation wages it is not fair play.

Mr. KAISER. That is not what we are doing.

Mr. STOKES. The money belongs to the American people, and we have to be very careful about how we spend it, especially to-day.

The CHAIRMAN. The American people themselves will not have anything to spend very soon, if this condition continues.

Mr. KAISER. You have to follow the story to get the complete picture.

In the first place, we bid upon this contract in competition with other bidders, and we bid $5,000,000 lower than the next bidder.

Mr. STOKES. That is just a cash saving.

Mr. KAISER. Starting from that point——

Mr. WELCH (interposing). What is the amount that would have been necessary in the Interior Department appropriation bill to have allowed you to proceed with your present force?

Mr. KAISER. That depends a good deal upon what the Interior Department proposes to do outside of the work we have. They have a great deal of work to do outside of that.

Mr. WELCH. There was a $2,000,000 item in the $5,000,000 reduction made by the Senate in the Interior Department appropriation bill which was sent back to us for concurrence. If the $2,000,000 that was taken from the bill by the Senate, in which the House concurred, had remained in the bill, would you have been in a position, or your corporation, to proceed with your work?

Mr. KAISER. I think not; and to make this clear, if you will let me explain that, I can picture the whole thing to you. There has been $31,000,000 appropriated to date. There is $7,000,000 which the Government has spent for materials which they furnished us, and which we do not furnish. The Government furnishes the materials.

Mr. WELCH. The Government furnishes the cement?

Mr. KAISER. They furnish the cement; they furnish all the major materials. We merely furnish the labor, and buy materials the labor uses; we furnish the materials that we manufacture on the job.

Mr. KOPP. You mean there has just been a total of $31,000,000 appropriated?

Mr. KAISER. Yes, $31,000,000 as the total.

Mr. KOPP. From the time we begin?

Mr. KAISER. From the time we began. We will, at the end of April, have earned fifteen million, approximately. The Government states that they will require eight for their projects, and their officers and organizations. That leaves us with $23,000,000 total for our contract, and that leaves only eight still left to use to date.

We have averaged an estimate from the Government for the work we have done of $2,000,000 a month since the first of the year. It is anybody's guess as to what we can do from now until the end of the year.

Mr. STOKES. Why are you paying higher wages out there when wages everywhere are lower?

Mr. KAISER. Because we raised the wages, feeling it was a proper thing to do and we would get better labor, and that under the conditions we would fare better. Whether we were right still remains to be seen. It is still a question.

Mr. WELCH. That does not add to the Government cost.

Mr. KAISER. No.

Mr. WELCH. They are not working on a cost-plus plan; they have a straight contract.

Mr. STOKES. I did not know that.

Mr. KAISER. That is the point. We bid on this job $5,000,000 lower than the next bidder.

Mr. KOPP. The deduction of $2,000,000 would just about close the work a month earlier?

Mr. KAISER. If we can accomplish $2,000,000 worth of work per month in the future, we will be compelled to shut down about a month earlier. We are not the only contractors that will be on that work.

The Government is now advertising for bids for pipe which will go inside the penstock tunnels. They are merely pipes which lead from the towers which receive the water, and these huge towers go into the penstock tunnels, and they go through finger tunnels into the power house and manufacture power.

Mr. WELCH. What will be the length of the penstocks?

Mr. KAISER. About 2,800 feet. They start at 50 feet in diameter and go down to smaller diameters, and the Government is asking for alternate bids so they may be changed. It is estimated that that contract will run between seven and ten million dollars. There is no provision made for that money at all.

If that contract is let, and they take it out of this fund we have, we would close down earlier. Do you get that clear?

There is a second contract to be let.

Mr. KOPP. You would have less money?

Mr. KAISER. We would have less money to draw from, and we would shut down that much earlier.

Mr. WELCH. How about the machinery for the power house?

Mr. KAISER. That has to be purchased by the Government, and that is not needed now. But the Government apparently thinks the penstocks are needed because they are advertising for bids. We have to build the tunnels, but the Government is furnishing the pipe and placing the pipe, and that is a seven to ten million dollar contract. But that is not the worst of it. We have before us a request from our officers now for from a half to a million dollars worth of high line equipment, which requires a year to manufacture and put in position, and we can not order it.

Mr. WELCH. As to the penstock you referred to, the material would in all probability be secured from manufacturers in the East?

Mr. KAISER. It will be, yes.

Mr. WELCH. The West coast has no facilities for manufacturing penstocks of that magnitude?

Mr. KAISER. That is right; or the Eastern manufacturers might find it necessary——

Mr. WELCH (interposing). It is not only a question of laying off a lot of laborers on the job.

Mr. KAISER. It affects 3,000 there, and it possibly affects 50,000——

Mr. WELCH (interposing). All through the United States.

Mr. KAISER. All through the United States, yes. We are purchasing our materials, that is the shovels and small tools we require, which the laborers use. We are purchasing those things, I think, from all but two or three States in the Union.

Mr. KOPP. How much would it take to keep everything going until the 1st of January?

Mr. KAISER. I want to go over that very carefully with the Interior Department and give our estimates, but in my judgment $15,000,000 is absolutely needed.

Mr. LOVETT. This is all very interesting, but it seems we have gotten away from the subject in connection with this bill.

The CHAIRMAN. If there are no further questions to be asked Mr. Kaiser, Congressman Dyer would like to be heard.

Mr. WELCH. It is interesting to those of us who voted against this reduction, which will send 3,200 men into the streets to join the army of the unemployed, and a large number of other men, because as has been developed here the machinery and the pipes will be manufactured in the East, giving employment to a number of other men.

Mr. KAISER. You will also lose money in addition, because you will not only lose interest on the money already invested, but also revenue that would have been brought in, because if we do not turn the river

this year, and there is only one period in which we can turn the river; the tunnels are practically completed and we are laying the concrete, and we can turn the river by October 15, although we have to December or January to turn the river. But if we do not turn the river, the contract is automatically postponed for one year and you lose the interest. In addition to that you lose the revenue, which is almost equal to the amount of the appropriation made.

Mr. WELCH. What section of the country manufactures the pipes and the penstocks?

Mr. KAISER. The central United States.

Mr. WELCH. Nearly all of it is manufactured in Pennsylvania, Ohio, New York, and Illinois?

Mr. KAISER. All over the country. They sent out 133 requests for bids.

Mr. WELCH. None of that would be manufactured west of the Rocky Mountains or of the Missouri River?

Mr. KAISER. None that I know of.

Mr. WELCH. I do not know of any either.

The CHAIRMAN. Mr. Dyer, we will be very glad to hear you now.

STATEMENT OF HON. LEONIDAS C. DYER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Mr. DYER. Mr. Chairman and gentlemen of the committee, I only desire to appear for a moment, simply to indorse the bill which is pending before this committee, and on which you are to-day holding a hearing, Senate bill 3847, having for its purpose a predetermining of rates of wages on Government projects, and I ask permission to extend my remarks by inserting in the record a statement from constituents of mine in the city of St. Louis, who know about these matters and who heartily indorse it, and state why they indorse it.

The CHAIRMAN. Without objection, the statement will be inserted in the record.

(The statement referred to by Mr. Dyer is as follows:)

ASSOCIATED GENERAL CONTRACTORS OF AMERICA,
St. Louis, Mo., April 26, 1932.

Hon. L. C. DYER,
Washington, D. C.

MY DEAR CONGRESSMAN: I am very much pleased indeed to note that on April 18 the United States Senate passed, by unanimous consent, the Metcalf prevailing wage bill (S. 3847).

This bill provides that the rate of wages to be paid on all Government projects shall be predetermined and made a part of the specifications in the contract, and provides for an adjustment of the contract price, either up or down, to take care of any changes in wage rates that may be ordered during the course of the work.

When this bill comes over to the House for consideration, I hope that you will see fit to register your approval of same.

The bill was passed by the Senate after its features had been explained by Senators Frederic C. Walcott of Connecticut and Royal S. Copeland of New York. They outlined the five main purposes of the bill as follows:

1. To guarantee to laborers and mechanics on Federal construction the payment of the prevailing rate of wages as made mandatory in the Davis-Bacon Act.
2. To provide for a predetermination of the prevailing wage on contracts so that the contractor may know definitely in advance of submitting his bid what his approximate labor cost will be.
3. To provide an adjustment of the contract price to meet fluctuations in prevailing wage scales during the life of the contract and to provide a penalty upon the contractor for failure to pay not less than the prevailing rate of wages.

4. To place a penalty upon the contractor who shall require laborers or mechanics to refund or rebate any wages paid less than the prevailing rate of wages.
5. To require the Government to pay at least the prevailing rate of wages on construction work performed by the Government with hired labor.

The committee report on the measure declared that its early enactment is absolutely necessary in fairness to labor and the contractors, and that it would correct the injustice and hardship worked upon the construction industry, as a result of its inability to figure the cost of labor in submitting bids for public contracts under the present Davis-Bacon law.

I would particularly stress the fact that the constitutionality of this bill is vouched for in the Senate committee report, to which you are respectfully referred.

I expect to see you on the hill some time during the week of May 2.

In the meantime I beg to remain.

Yours very truly,

R. L. MURPHY.

The CHAIRMAN. Mr. Harding, have you any other witnesses?

Mr. HARDING. Mr. Chairman, I have here a few exhibits that I would like to introduce into the record, if I may.

The first exhibit I desire to introduce is the Senate report on the Metcalf bill.

(The report referred to is as follows:)

[Senate Report No. 509, Seventy-second Congress, first session]

The Committee on Education and Labor has duly considered the bill, S. 3847, and with committee amendments it is reported as follows:

This bill has five main purposes:

1. To guarantee to laborers and mechanics on Federal construction the payment of the prevailing rate of wages as made mandatory in the Davis-Bacon Act.
2. To provide for a predetermination of the prevailing wage on contracts so that the contractor may know definitely in advance of submitting his bid what his approximate labor cost will be.
3. To provide an adjustment of the contract price to meet fluctuations in prevailing wage scales during the life of the contract and to provide a penalty upon the contractor for failure to pay not less than the prevailing rate of wages.
4. To place a penalty upon the contractor who shall require laborers or mechanics to refund or rebate any wages paid less than the prevailing rate of wages.
5. To require the Government to pay at least the prevailing rate of wages on construction work performed by the Government with hired labor.

The early enactment of this legislation is absolutely necessary in fairness to labor and the contractors. It gives labor new and increased protection not provided by the Davis-Bacon Act, without abrogating any of the rights given labor by that act. This bill will correct the injustice and hardship worked upon the construction industry as a result of its inability to figure the cost of labor in submitting bids for public contracts. This act will be a tremendous benefit to labor in that it will remove the incentive of the contractor to seek cheap labor and encourage wage cuts.

Ample evidence has been submitted to the committee that there is a vital need for this legislation. Numerous cases have been cited where contractors have been brought to the point of ruin by the fluctuation of wage scales, the payment of which is mandatory under the Davis-Bacon law. This bill will in no way interfere with the natural increase or decrease of prevailing wage scales but does provide that the contractor or the Government, respectively, will be reimbursed as a result of the increase or decrease in labor costs.

This bill has had the support of responsible contracting organizations throughout the United States, has been approved by banks, guaranty companies and bonding companies, and by the manufacturers of materials used on public construction. The only opposition presented to the bill was in the form of a doubt as to its constitutionality. This was largely based upon a decision of the Illinois Supreme Court, printed in the hearings, declaring the Illinois prevailing wage scale law to be void. The committee has considered this decision and finds this law was declared void because its terms were uncertain and indefinite. In the words of the court decision:

"The act is void because 'accepted rules of construction applied to certain sections will not avail to disclose the legislative intent and courts are powerless to supply the omissions of the act. No person, by reading the act, will know with a

reasonable degree of certainty what rights it confers and what duties or obligations it imposes.' In our view it will be necessary to consider only the contentions that the act is void because it is incomplete and uncertain and that it delegates arbitrary power in violation of the fundamental law."

The committee therefore concludes that the Illinois decision has no bearing whatever upon the constitutionality of this act. The American Federation of Labor expressed no opposition to the bill other than to doubt its constitutionality. It was further stated that the bill would set wages by law. This is contrary to the facts, as the bill merely sets up a primary scale of wages which the contractors shall consider a prevailing scale of wages on a certain contract. This prevailing scale may increase or decrease at any time during the life of the contract, and is in complete conformity with the purpose of the Davis-Bacon Act.

This bill is practical in operation. The Secretary of Labor stated before a committee of the House:

"In response to a question as to how long we thought it would take to adjust any dispute that may arise we set a maximum of 10 days, and I think that is correct, because we have our conciliators in different parts of the country and we can get on any job very quickly. I have no hesitancy in trying to determine that question."

The committee therefore concludes that—

1. This bill is necessary to the intelligent, economical, and efficient negotiation of contracts for public buildings.
2. It will be of tremendous benefit to labor.
3. It will remove labor troubles on public contracts.
4. It will enable contractors to bid intelligently and reduce the cost of public construction.
5. It is constitutional.

The committee therefore concludes that the bill should be reported to the Senate with the recommendation that it do pass with the following amendments:

Page 2, line 17, after the word "at", insert the words "not less than".
Page 3, line 8, after the word "pay", insert the words "not less than".
Page 3, line 11, after the word "wages", insert the words "contained in the specifications".
Page 3, line 24, after the word "contractor", strike out the words "and his subcontractors" and insert in lieu thereof the words "or subcontractor".
Page 3, line 25, strike out the word "fail" and insert in lieu thereof the word "fails".
Page 3, line 25, after the word "pay", insert the words "not less than".
Page 4, line 1, after the word "or", insert the words "not less than".
Page 5, line 13, after the word "pay", insert the words "not less than".
Page 6, line 3, after the word "pay", insert the words "not less than".
Page 6, after line 5, add the following section:

"SEC. 4. If the provisions of section 1 of this act, or the application thereof to any person or circumstances, shall be held invalid, the act of March 3, 1931, or the application thereof to any such person or circumstances, as the case may be, shall not be affected by the enactment of this act."

The purpose of these amendments is to protect the validity of the Davis-Bacon Act in the event this act or any part of it should be held invalid.

Mr. HARDING. The second exhibit I have, Mr. Chairman, is a telegram from the president of the Nebraska Federation of Labor, in which he says:

Nebraska State Federation of Labor indorse predetermination of wages Government construction and think it is preventative of wage disputes on Government projects during period of construction.

I also would like to introduce at this time, if I may, an article from the Providence (R. I.) Journal.

The CHAIRMAN. Is that an editorial or a newspaper article?

Mr. HARDING. Yes.

The CHAIRMAN. We have not been putting articles of that kind in the record. It is not customary to do that. You can make a reference to it and read the parts of it you desire to put in the record. But as to putting the whole article in, we have never done that.

Mr. HARDING. In the Providence Journal of April 25, 1932, there is an article in which it is stated in the headlines:

Labor commends Senator Metcalf. State A. F. L. branch indorses amendment to bill for prevailing wage rate.

In appreciation of United States Senator Jesse H. Metcalf's amendment to the Davis-Bacon Act, which will, if it becomes law, compel the payment of prevailing rates of wages to merhanics and laborers by contractors doing construction work for the United States Government, the Rhode Island State Branch of the American Federation of Labor in annual convention yesterday adopted the following resolution:

"We, the delegates to the thirty-second annual convention of the Rhode Island State branch, join with the Providence Building Trades Council in commending Senator Metcalf for his good work in behalf of the building trades mechanics and laborers by having passed through the United States Senate his bill in amendment to the Davis-Bacon Act."

I would also like to have, if I may, permission to introduce into the record the testimony which I gave before the Senate committee.

The CHAIRMAN. Without objection, that may be done.

(The statement above referred to is as follows:)

STATEMENT OF EDWARD J. HARDING, MANAGING DIRECTOR ASSOCIATED GENERAL CONTRACTORS OF AMERICA, BEFORE THE SUBCOMMITTEE OF THE SENATE COMMITTEE ON EDUCATION AND LABOR, AT HEARINGS ON S. 3847, MARCH 17, 1932

Mr. Chairman and gentlemen of the committee, the Associated General Contractors of America is vitally concerned in the proposed legislation which you have before you to-day. Nationally representing, as it rightfully claims to do, the best and most responsible elements in the general contracting business, and with a membership of several thousand outstanding constructors in all parts of the country whose motto is "Skill, integrity, and responsibility," the Associated General Contractors desires to fully lay before you the necessity and justice of amending the Davis-Bacon prevailing wage law along the lines set forth in S. 3847.

In the presentation of our case we propose to develop seven major points which we believe should be carefully considered by this committee and by Congress. We propose to show:

First. That the present prevailing wage law was hastily enacted as emergency legislation, with the tacit understanding that its imperfections and inherent weaknesses would be corrected by this Congress.

Second. That the fundamental weakness of the Davis-Bacon law in itself, and as supplemented by the Executive order of January 19, 1932, lies in its failure to establish what shall constitute a "prevailing rate of wage" in a given locality, or to lay down a definite rule whereby such fact is to be impartially and accurately ascertained.

Third. That there exist honest and irreconcilable differences of opinion as to what facts should be considered in arriving at a determination of the prevailing wage rate.

Fourth. That these differences of opinion make it necessary in the interest of fairness to both the contractor and laborer that there be a predetermination as to what shall constitute the prevailing wage rate for each contract so as to remove all uncertainty as to this important fact.

Fifth. That the uncertainty attending post-determination of the prevailing wage under the Davis-Bacon law at present is working hardship and injustice upon the responsible general contractor and is discouraging the better class of contractor from competing for Government work.

Sixth. That an average of one dispute a day in regard to the prevailing wage law has been referred to the Department of Labor during the first nine months of the law's operation, and that dissatisfaction with the manner in which the law operates has been freely expressed by both employers and employees alike.

Seventh. That the bill, S. 3847, introduced in the United States Senate on February 26, 1932, by Senator Jesse H. Metcalf, and now being considered by this committee, will remedy the present glaring weaknesses that have been revealed in this legislation, will fortify the statute against its present vulnerability on constitutional grounds and will extend and assure to labor the benefits contem-

plated in the original legislation, but which to date have not been satisfactorily achieved.

With the committee's permission and indulgence, I will now undertake to develop these seven points, and shall endeavor to do so as briefly as seems consistent with a clear and adequate presentation of our case.

MEMORANDUM ON PREVAILING WAGE LEGISLATION

It is well to bear in mind that although legislation designed to maintain the wage level on Government construction work has been before Congress for more than five years, the Davis-Bacon Act as passed by Congress at its last session admittedly was an emergency measure for which even the most staunch supporters did not claim perfection. Its sponsor in the Senate, Senator James J. Davis of Pennsylvania, at the 2-hour committee hearing which resulted in the bill being favorably reported, stated:

"This bill is not all that I would like to see it, but it is all that we can get an agreement on now between the administration officers."

In reply to this statement by Senator Davis, Mr. William Green, president of the American Federation of Labor stated:

"It is not what we would like," and the inherent weaknesses in the bill were recognized in committee hearings in both houses. But admitting these weaknesses, the bill was passed on the plea of Secretary of Labor Doak and other of its supporters that it was an emergency measure. The attitude behind the passage of the act is illustrated by the following excerpt of testimony at the hearing by Senater Robert M. La Follette, jr., chairman of the Senate Committee on Manufactures, and Mr. M. J. McDonough, president of the building trades department of the American Federation of Labor:

"Senator LA FOLLETTE: Is it your opinion that regardless of whatever inherent weaknesses there may be in this bill, that its enactment will fix the responsibility on the various departments having jurisdiction over public buildings to maintain the prevailing wage scale in the communities where these buildings are to be erected?

"Mr. MCDONOUGH: In my opinion the saving clause, as far as our people are concerned, is that: 'In case any dispute arises as to what are the prevailing rate of wages for work of a similar nature applicable to the contract which can not be adjusted by the contracting officers, the matter shall be referred to the Secretary of Labor for determination, that his decision thereon shall be conclusive on all parties to the contract.' I believe from the viewpoint of our people that is the saving clause."

In summing up this attitude, Senator Davis stated:

"In other words, it is the fairness of the Secretary of Labor in this matter that will safeguard the whole proposition."

This is precisely the situation as the Davis-Bacon law stands to-day and while we do not impugn the fairness of the Secretary of Labor, we do propose to show from the committee hearings that there are two distinct theories as to what constitutes the "prevailing rate of wage" and that in due fairness to the contractors the rate should be predetermined and made a part of the specifications and contract.

One of these theories is that the prevailing wage is that arrived at through collective bargaining between employers and employees (or the union wage) while the other theory is that the prevailing wage is the rate paid to the largest number in a particular locality at a given time. Organized labor uncompromisingly entertains the former theory, while the contractors, many Members of Congress, and awarding officers entertain the latter. It is this difference in basic viewpoints that has caused practically all of the difficulty under the law and we propose to show that these difficulties have been numerous and widespread.

As evidence of these two theories as to what constitutes the prevailing wage, we again refer to the testimony of previous hearings on this subject. On January 13, 1932, President Green of the American Federation of Labor stated before the House Labor Committee as follows:

"Labor contends of course that the prevailing rate of wages in every community is the rate of wages agreed upon between the representatives of labor and the contractors carrying on contracting work in the community. There is not any other; there is not any other agreed to. Nobody establishes a rate of wages except as it is worked out through collective bargaining and by agreement."

Again on the following day he stated:

"Then of course we have had controversy as to what is the prevailing wage. But as I said yesterday, we contend that the prevailing rate of wages in any community is a rate that has been made public, agreed to between a large group of employers and a large group of workers, representing the industry. There is no other rate agreed to. That is the prevailing rate, as we understand it, in every community. There is no other standard."

Last year before the Senate Committee on Manufactures, Mr. Green stated in response to a suggestion from Senator Sheppard that sometimes the prevailing rate is lower than the standard union rate, as follows:

"We hold that the prevailing rate in the community is the union rate, the rate paid by contractors who carry on the contracting work in private industry. There is no other agreed rate except the rate agreed to through collective bargaining, and the rate paid to nonunion workers is merely an arbitrary rate fixed by some employer."

On the other hand, on January 22, 1932, Mr. James A. Wetmore, Acting Supervising Architect of the Treasury, stated as follows:

"We understand the prevailing rate of wage to be the rate paid to the largest number of mechanics or laborers at work in a particular locality at a given time. The union rate might be higher, but there might be a larger number of mechanics and laborers working at a lesser rate. The prevailing rate, as we see it, is the rate paid to the largest number of, say, carpenters, bricklayers, stone masons, and laborers in that civil division at a given time. It is not a scale or fixed rate established, but the prevailing wage is the rate paid to the largest number employed. It must be that."

Also an excerpt from the testimony of Maj. Gen. Lytle Brown, Chief of Engineers, United States Army, on January 20, 1932, is as follows:

"If I found a man violating either the law, if there was a law, about wages, or my own idea as to what was fair and just—and I think he ought to pay the prevailing wage—which is not necessarily the union wage, but the prevailing wage in that community—I would tell him to correct it and I would inspect to see whether he did correct it or not."

Representative Richard J. Welch, of California, in the following statement likewise recognizes the difference between what is actually the prevailing wage and what the friends of labor would like it to be:

"The prevailing wage at a time when there are between seven and eight million idle men in the country and the living or fair wage are entirely different, and a difference should be made between them."

We agree entirely with that statement and believe that Congress should immediately make provision for the predetermination of the wage so that the contractor, facing the stiffest competition he has ever had to meet, will know when he puts in his bid whether he will have to pay the actual prevailing wage or what the Secretary of Labor believes should be the prevailing wage.

We want to emphasize to the committee that the idea of predetermination is not new nor something that we have brought forth since enactment of the Davis-Bacon Act, but that it was contained in the Sproul bill (H. R. 9232, 71st Cong.) which was unanimously supported by organized labor and reputable general contractors. Why it was discarded, we do not know. It was hastily done at a 2-hour committee hearing in the Senate and an hour and 35-minute hearing in the House while the Associated General Contractors of America were 4,000 miles away on the Pacific coast holding their twelfth annual convention.

As stated above, the Sproul bill was unanimously indorsed by organized labor. At hearings on the bill, Mr. John J. Gleason, secretary-treasurer of the International Union of Bricklayers and Plasterers, stated as follows:

"As sponsors for the Sproul bill, we interceded with Mr. Sproul upon our behalf, because of our familiarity with him as being a fair employer and because of our knowledge of his being familiar with that which might be necessary in the building industry."

The author of the bill, former Representative Elliott W. Sproul, of Illinois, has been intimately connected with the contracting business for 50 years and realized the vital importance of providing for predetermination in legislation of this kind. Section 3 of his bill reads as follows:

"The head of the department of the United States, or the Commissioners of the District of Columbia prior to advertising for proposals for the construction or repair of any public work of the United States or said District, shall determine by impartial investigation the rates of wages for comparable work prevailing among private industry in the immediate vicinity of the work to be performed under the contract."

At the hearings on the bill, Mr. Gleason presented the following statement from one of the large employers of the country:

"There had been some misapprehension among us concerning the 'prevailing wage' what it might be and who should determine it, and are pleased to note on studying H. R. 9232 that section 3 thoroughly and definitely makes it obligatory upon the department head of the United States or the Commissioners of the District of Columbia to determine the rate for comparable work prevailing in the vicinity before advertising for proposals. The bill, therefore, is clear cut and definite in this respect and leaves no opening for litigation, delays, or embarrassment concerning the rate that is applicable."

After having been unanimously indorsed by labor and employers alike, we can not see why this principle of predetermination was discarded in writing the Davis-Bacon bill nor why there should be hesitancy on the part of this Congress to immediately incorporate it into the measure. Former Representative Sproul is a member of our organization and on February 10, 1932, his company, the E. W. Sproul Co. of Chicago, addressed a letter to us as follows:

"GENTLEMEN: Referring to your communication dated February 8 regarding the prevailing rate of wage law.

"We feel the amendment as noted in your second paragraph will clarify the situation and we urge immediate action, as under the present interpretation of the law, it is impossible for a reputable contractor to estimate his cost intelligently."

At the House hearings on this subject in January, Representative O. V. Lovette, of Tennessee, made the following statement, which comes very near expressing our views upon the subject:

"I am committed to the proposition of predetermining a rate of wage. I think it can be done and be put into the contract and that it will preclude many difficulties; but I can see that there may be some objections to that. I am trying to learn the objections to a predetermination of wage rates in advance and writing them into the contract. It has to be done sometime before they begin to pay anything and if there is any dispute about it, it has to be finally determined. Why not determine it, certainly on an average contract, and write it into the contract so that the contractor may know what he has to pay and will be in a position to use the knowledge in submitting a bid. There can be no dispute in that case, because the contractor will sign the contract agreeing to pay a certain wage. If we make a law drastic enough to enforce that, I think it would be all right. If there is any objection to that, and I know that some say there is, I should like to learn the objections."

We have been asking that question for more than a year but so far have been unable to pin anyone down to a logical or sincere objection. For instance, Mr. Thomas A. Lane, special representative of the Bricklayers, Masons, and Plasterers' International Union of America, before the House Labor Committee on January 19, stated:

"This international union is somewhat skeptical over a predetermined wage rate, as we feel a predetermined rate will very probably result in a contract officer setting wages. The contract officer is less sympathetic to the aims of labor than the Department of Labor and we, therefore, are not inclined to favor this change."

Col. Lewis H. Tripp, of the United States Veterans' Administration, in answer to a query from the chairman of the House Labor Committee, stated:

"I think that predetermination of wage rates is the fair thing to do if it can be done, but there are many questions involved. There is first the question of mechanism and as the thing stands at present, the Secretary of Labor is a final determining authority so that from my own standpoint I would see the possibility of difficulty in undertaking to establish a wage that later might be subject to revision of submission."

President Green of the American Federation of Labor, before the House Labor Committee on January 13, last stated that it would seem that the prevailing wage could be maintained on Government construction work by predetermination.

Mr. William J. Gallagher, organizer of the Painters, Decorators, and Paperhangers of America, also recently admitted before the House committee that predetermination might clarify the atmosphere. He pointed out that the Secretary of Labor to-day has all the rates paid in the building industry at his finger tips.

The situation is that labor wants final determination as to what is the prevailing wage left with the Secretary of Labor, which is agreeable to us providing the rate is predetermined by him, but the Secretary of Labor has flatly refused to consider doing this. In this respect, we quote from the record as follows:

"The CHAIRMAN (Mr. Connery). When the contractors were before the committee, they offered a proposition such as Mr. Lovette mentioned of predetermination of wages providing that where the wages went up the Government should pay the difference and where the wages went down, there should be a refund to the Government.

"Secretary DOAK. Did they say how they would have the wages determined?

"The CHAIRMAN. Yes. By the Secretary of Labor.

"Secretary DOAK. That would mean that if you started a job and fixed the wages to-day, they could open up the question next month. I am afraid they will have to get somebody else to do that job and possibly some of them would like to have somebody else do the job."

Nevertheless, we submit that the Secretary of Labor was made the final arbiter of the prevailing wage on the supposition and on his representation that his department had the facilities to quickly determine the prevailing rate of wage in any part of the country. We refer to his testimony before the Senate Committee on Manufactures last year when he stated as follows:

"We agreed that the Secretary of Labor should make the final determination because we have a conciliation service at the Department of Labor, and we have facilities to go into these matters very quickly. In response to a question the other day before the House committee as to how long we thought it would take to adjust any dispute that may arise, we set a maximum of 10 days and I think that is correct because we have our conciliators in different parts of the country and we can get on any job very quickly."

Before the House Labor Committee he stated:

"I believe this matter of prevailing wages will not be extremely difficult to determine and it can be done without any additional expense whatever by the utilization of our existing conciliation service."

Further he stated:

"I think that the prevailing wage rate for all classes of labor in all these territories is pretty well defined. There may be some territories that pay a lower wage rate and some that pay a higher wage rate, but I think the prevailing rate of wages is pretty well established. I have no hesitancy in trying to determine that question."

At that same hearing Acting Supervising Architect Wetmore brought out the fact that to some extent wages must be determined before any Government building project is undertaken. His statement was as follows:

"When we estimate the limit of the cost of a building, we have to possess some reasonably correct knowledge of labor and material costs at the locality and we ascertain as best we can what those are from the Bureau of Labor Statistics of the Department of Labor and other sources."

It will be readily seen therefore that in reality the United States Government at the present time is determining in advance largely through the Department of Labor, the prevailing rate of wage and there would seem to be no just reason why this information should not be made available to the honest contractor, desirous of submitting a low bid and at the same time meeting the requirements of the prevailing wage law, so that he might prepare a sound, unspeculative estimate. It is this uncertainty, not as to what the prevailing wage is, but as to what the Secretary of Labor will declare it to be, that is causing such hardship on the reputable contractors of the country and to a large measure is defeating the purposes of the legislation.

Predetermination is absolutely essential in fairness to the contractor and if the officer of the Government whom labor has chosen to pass upon the rate, wishes to dodge the responsibility of predetermining that rate, we urge that the contracting officer or some other authorized official of the Government be empowered to predetermine and announce to the contractor in the specifications just what wage rates they must pay.

As we have stated before, we are not particularly adverse to having the Secretary of Labor perform this function, if he will do it, but, as indicated by his attitude before the House Labor Committee, he will not, then in all fairness we think Congress should delegate the task to some one else and by law require predetermination. We believe that the testimony before the House Labor Committee last month and the correspondence which we intend to introduce into the records will convince anyone that the Davis-Bacon law is not working to the satisfaction of either labor or contractors and that in many instances it is working injustice. The Secretary of Labor testified before the committee that during the first nine months that the law was in effect, approximately 200 specific disputes as to wage rates on public buildings were submitted to the Department of Labor, in addition to scores and scores of minor disputes involving labor for one single craft. Mr. Green testified that there are a great many instances where the building trades

represented, supported by the American Federation of Labor, have been compelled to carry an appeal to the Department of Labor in an effort to have the prevailing rate of wage law enforced.

Mr. Joseph S. McDonagh, representing the International Brotherhood of Electrical Workers, testified that his organization has protested to all departments of the Government that are doing building construction work and are still protesting many violations of the prevailing wage law.

Brig. Gen. L. H. Bash, of the office of the Quartermaster General of the United States Army, testified that since the law went into effect, they have had about 40 complaints in regard to the prevailing wage law.

Colonel Tripp testified that the United States Veterans' Administration had had a number of cases where there have been disputes, while Mr. Lane of Bricklayers, Masons, and Plasterers International Union, and Mr. Dan M. Gayton, of the International Association of Bridge Structural and Ornamental Iron Workers, each cited numerous cases of disputes and dissatisfaction.

We now come to the voluminous evidence which we have here in our Washington office as to the uncertainty, inequity, and disruption which is following in the wage of this hodge-podge legislation. While it is not our intention to load down the record with any great portion of this evidence, we want to emphasize to the committee that we have what we believe to be justifiable complaint from contractors of unquestioned repute from all parts of the country, and that any member of the committee who desires further evidence along the lines which we are now introducing is entirely at liberty to call for our files and personally go over this staggering amount of complaining correspondence which we have received.

In presenting the following evidence contained in these letters, we shall, for the sake of brevity, quote only those parts giving the pertinent facts. Illustrative of them all, however, we introduce in full at this point a letter from Colonel George B. Walbridge, chairman of our legislative committee, past president of this association, and a general contractor of high repute and accomplishments who enjoys the respect and confidence of all with whom he comes in contact, including the President of the United States, who in 1930 appointed him as one of the representatives of the United States at the International Congress of Building and Public Works held at London, England.

WALBRIDGE-ALDINGER CO.,
Detroit, Mich.

Mr. E. J. HARDING,
Managing Director Associated General Contractors of America,
Washington, D. C.

DEAR MR. HARDING: It was my understanding, when I appeared before the Labor Committee, that Secretary of Labor Doak had testified there were very few cases, and to his knowledge only one, on which he was called to rule on the prevailing rate of wages. This was a case in Washington, D. C., where the question of the prevailing wage to be paid painters was presented. It was ruled that $13 per day was the prevailing rate of wage. His contention is that there are no controversies arising due to the Davis-Bacon law.

I should like to state you my own case in Detroit where I have the contract for the foundations for the new post office. Before we started on this job, I had an agreement with a representative of the Secretary of the Treasury's office whereby we established a rate of wage to be paid on these foundations. We agreed to a rate that was from 10 to 20 per cent higher than the wages paid in the city of Detroit by the Associated Building Employers, the General Builders, etc., for this type of work.

After proceeding with this work for some time, I received a letter from the Treasury Department, stating that we were not paying the prevailing rate of wage as determined by the Secretary of Labor. I immediately wrote to the Treasury Department, inclosing a copy of our agreed scale. Shortly after, I received another letter, protesting that we were not paying the prevailing scale and finally a man, representing himself to be from the office of the Secretary of Labor, came to Detroit.

In all of these instances, they endeavored to raise the scale which we had agreed upon with the Treasury Department from 10 to 17½ per cent.

This, I think you will find, is happening on many jobs which are being done throughout the United States.

I cite this as my own personal experience.

Very truly yours,

GEORGE B. WALBRIDGE.

What we believe to be an outstanding example of the detrimental and unjust manner in which the Davis-Bacon law is working against the responsible general contractor is contained in the record of the experience of one of our valued members, J. P. Cullen & Sons, (Inc.), of Janesville, Wis., under its contract for the construction of the post-office building at Cedar Rapids, Iowa. This firm has been employing labor for more than 40 years and for the past 27 years has constructed post offices in the central States during which period it has had no labor troubles. Soon after it was awarded the contract for the Cedar Rapids post office, a committee of the building trades of Cedar Rapids visited its office and submitted a wage scale of 27 units, stating the same was the prevailing scale in effect in the Cedar Rapids territory. The J. P. Cullen Co. advised the labor committee that if such was the scale, it was agreeable to them.

They did question the laborers' scale of 65 cents per hour, as it seemed very much unbalanced to them in comparision with the other units. They were assured however, by the committee that this was the scale being paid by all builders in Cedar Rapids and when the work was started the Cullen Co. paid the 65 cents up until December 10 of last year when the company's superintendent reduced the scale to 50 cents per hour due to the fact that no contractor in the city was paying 65 cents per hour for common labor. This information was procured by putting out one of the company's scouts, who visited every piece of construction going on in the city. It took three days to cover the city. The scale varied from 25 cents to 50 cents per hour and most of the work was being carried on by contractors who had signed up with the Federated Trades in April, 1931, to pay 65 cents per hour. The Cullen Co., therefore, felt justified in reducing its wage scale to 50 cents but was at once reported to the Department of Labor and was advised by the Assistant Secretary of the Treasury to do nothing that would cause labor trouble. The Cullen Co. submitted its case with affidavits, etc., to the Department of Labor in reply to which it received the following letter from Assistant Secretary of the Treasury Lowman:

TREASURY DEPARTMENT, *January 5, 1932.*

J. P. CULLEN & SONS (INC.), *Janesville, Wis.*

GENTLEMEN: Referring to your contract for construction of the Cedar Rapids, (Iowa), post office, to your letter of December 26 and your telegram of December 29, you are advised that the question of your proposal to reduce your rate of pay for common labor from 65 cents to 50 cents per hour was brought to the attention of this department by the Secretary of Labor.

As final decision in all cases of dispute as to wage rate rests with the Secretary of Labor and as this department is without authority to question the decisions of that official in any case, it is suggested that any evidence you may have to offer be presented to him for consideration.

Respectfully,

S. LOWMAN,
Assistant Secretary of the Treasury.

On receipt of this letter, the Cullen Co. at once advanced the wage scale to 65 cents per hour, paid up all back wages, laid off all union laborers, and hired nonunion laborers. Its reason for this was that the committee who visited the company and stated that the common labor rate was 65 cents per hour deliberately lied, according to Mr. J. P. Cullen. "They knew their men were working the entire season for 50 cents or less." Mr. Cullen said, "and we felt that having to pay the 65 cents per hour, it would be to men having no labor union affiliation. We have just as good if not a better crew now and we are paying them 65 cents per hour.

"The result of this move on our part has this effect. A Mr. Rodgers from the Department of Labor at Washington was sent to Cedar Rapids to intercede for the union and have us rehire union men we laid off and discharge our present crew. Mr. Rodgers remarked, incidently, that some kind of pressure should be brought to force Cullen to act along this line. This man is on the job to-day and is adamant to everything but union labor. Our Mr. M. A. Cullen, who is in Cedar Rapids to-day, informed Mr. Rodgers he had nothing relative to the labor question on this job to discuss with him; that we were paying the prevailing wage scale as ordered by the terms of the contract between ourselves and the United States Government which in no way mentions union labor or anything pertaining to union labor. We therefore were not at all interested in what he had to offer."

Nevertheless, labor agitators continued to hound this contractor and charges of a most serious nature in connection with the construction on the Cedar Rapids

Post Office were made and published in the newspapers of that city. J. C. Lewis, president of the Iowa Federation of Labor, and Cedar Rapids Union Labor members complained to the Iowa congressional delegation about alleged violations of specifications for the new post office there and the complaints were sent to Washington accompanied by affidavits of men who had been employed by J. P. Cullen & Sons. The affidavits charged that cement in the amounts required by the specifications were not at all times being used; and other charges were that granite buffer stones, which should have a full bearing on concrete were not being so set, that a part of each stone had no bearing on anything but air, and that in some instances wooden wedges had been left under them; that the specifications required the drenching of common bricks before they were used in the walls and that this was not being done; and that the Cedar Rapids wage scales for bricklayers were being violated by importing bricklayers from Keokuk, who work for less than the local scale. With this agitation at its height the contractor received the following letter from the Assistant Secretary of the Treasury:

TREASURY DEPARTMENT,
Washington, January 25, 1932.

J. P. CULLEN & SONS (INC.),
Janesville, Wis.

GENTLEMEN: Referring to your contract for the construction of the new Cedar Rapids, Iowa, post office, you are advised that this department is in receipt of information that while you are paying the prevailing rate of wages as determined by the Government you contemplate certain action that may lead to labor troubles and a consequent stoppage of work under your contract.

While this department is without authority under the law to fix the general conditions under which labor is to be employed in connection with its contracts it is vitally concerned in the question of the maintenance of a proper rate of progress in connection with work thereunder. You will, therefore, be held strictly accountable for such cessation of work as may result from any act on your part and it is therefore suggested that you give this fact careful consideration in connection with any steps that you may contemplate taking.

Respectfully,

_____,
Assistant Secretary of the Treasury.

The contractor replied as follows:

JANUARY 28, 1932.

TREASURY DEPARTMENT,
OFFICE OF THE ASSISTANT SECRETARY,
Washington, D. C.

DEAR SIR: Your letter of the 25th has been received and carefully noted and we respectfully request you to inform us who your informant is who states we contemplate certain action that may lead to labor troubles on this project. We resent this groundless information and it is absolutely without foundation and could come only from someone having an ulterior motive. If we contemplate taking any action, as you mention, it is very unlikely to be public until the action is taken. Therefore, it is evident the information you have is untrue.

We are of the opinion that an investigation by a representative of the Treasury Department should be made on this project in order to get the existing facts.

We have been employing labor for over 40 years and for the past 27 years have constructed post offices in the Central States and during this period have had no labor troubles and will have none in the present instance.

On this Cedar Rapids job we are employing local men, making no exception only giving preference to American Legion men and men with families, and these men and the citizens of the community are in accord with this procedure 100 per cent.

We assure you that satisfactory progress is being made on this contract to insure its completion within the stipulated time specified irrespective of the labor agitation.

Yours respectfully,

J. P. CULLEN & SONS (INC.).

In regard to the previously mentioned charges of violations of the specifications, which were publicly made by one Howard C. Martin, representatives of the Cullen Co., called upon Martin at his office and gave him one hour to have a sworn affidavit in their construction office denying all of his allegations. His affidavit of denial was published in the newspapers of Cedar Rapids as follows:

FEBRUARY 20, 1932.

To whom it may concern:

In regard to statements that I have made in a letter to the Supervising Architect for the new post-office building at Cedar Rapids, Iowa, I wish to make the following corrections and retractions.

The granite bufferstones which are set so that they do not have a full bearing on the wall below, I find that these stones are set in strict accordance with contract drawings and specifications. In other words the plans show these pieces of granite projecting 4 inches so that they may fully perform their duty as buffers for the oncoming mail trucks at the mailing platforms. The wooden wedges used under these stones were used to hold the stone in position until the mortar had hardened and the wedges are to be withdrawn and the space occupied by them will be filled with cement mortar.

In regard to drenching the brick with water before they are laid in the wall I find that this provision may be omitted at the discretion of the Government engineer on the job. I am fully aware that in common building practice the reason for drenching brick with water is that in hot summer months the brick becomes so dry that they draw water from the mortar in which they are laid which tends to weaken the mortar. In winter months this dry condition of the brick does not exist and I know that drenching the brick with water would be contrary to good building practice and for this reason the matter is generally left to the discretion of the Government inspector on the work.

In regard to the statement that I made that the subcontractor who is laying the common brick on the new post-office building is not paying the prevailing scale to his men I find that this contractor had his first pay roll on this job February 20, 1932. On this day a representative of the local bricklayers union, Leo McSwiggen, checked the pay roll of the brick contractor and found that the prevailing local wage scale was being paid to the men in the employ of this brick subcontractor. For this reason I wish to retract the statements made by me that the bricklayers on the new post-office building at Cedar Rapids, Iowa, were not being paid the prevailing scale.

HOWARD C. MARTIN, *420 Longwood Drive.*

Witnessed:

C. R. FAHRNEY,
Notary Public in and for Linn County.

The upshot of the case was that on February 16 Assistant Secretary of the Treasury, Ferry K. Heath, addressed the following apologetic letter to the contractor:

TREASURY DEPARTMENT,
Washington, February 16, 1932.

J. P. CULLEN & SONS (INC.),
Janesville, Wis.

GENTLEMEN: Referring to your letter of January 28, you are advised that the department regrets to have troubled you with an apparently baseless complaint regarding the labor employed in connection with your Cedar Rapids (Iowa) post-office contract.

The department was informed that your proposal to lower the pay of common labor in connection with the contract in question was likely to lead to labor troubles, and this is something which it makes every effort to prevent in all cases. The rate of wages for common labor was fixed by the Department of Labor, and as you have accepted that rate there would appear to be no basis for any further controversy.

Your assurance that you have given and will continue to give preference to local labor and ex-service men is appreciated by the department, as it is entirely in accord with its wishes. Every effort is being made to enforce the terms of the wage law and to induce contractors to carry out their work so that it may result in the largest possible benefit to the community involved.

Respectfully,

FERRY K. HEATH,
Assistant Secretary of the Treasury.

It will be readily appreciated by the committee that such tactics as these are unjust and very harmful to the contractor and add considerably to the risks involved in undertaking Government work.

Another typical case which we wish to call to your attention is cited in the following letter from the president of our Shreveport (La.) chapter:

SHREVEPORT, LA., *December 28, 1931.*

E. J. HARDING,
Managing Director Associated General Contractors of America,
Munsey Building, Washington, D. C.

DEAR SIR: I am writing to you, both as an individual member of the Associated General Contractors and also as president of the Shreveport chapter.

Several of our members have run afoul of the Bacon-Davis law, in connection with our work on the new Government airport at Barksdale Field, adjoining the city of Shreveport.

Early in the spring of this year, we contractors of Shreveport realized that the wages of building mechanics would have to be reduced from their at that time high scale if any construction work was to proceed in this territory. We were all at that time working union mechanics and at that time we gave the bricklayers union due notice that their wages would be reduced from $13 to $9 per day. They refused to accept this reduction and after many conferences, into which a representative of the Department of Labor was brought, the leading builders of Shreveport decided to change over to the open-shop operation and we proceeded on a $9 per day scale. The unions took up the issue with the War Department and after a long delay, we finally received instruction from General Bash, that in accordance with the Bacon-Davis law, he had decided that the prevailing scale for bricklayers on Barksdale Field would be $11 per day. While this was a higher wage than was being paid in any of the surrounding cities of the Southwest and a higher wage than our work at Barksdale Field had been figured, we decided to go through on this basis as we felt that a final appeal to the Department of Labor would be futile, owing to the fact that this department is apparently impregnated with unionism throughout.

We felt that this decision of General Bash would stabilize things, and shortly after this decision was rendered the Government took bids on the administration building for this project, on which we all figured the work on the $11 per day basis. However, the unions were not satisfied with their compromise and made a further appeal with the result that about two weeks ago and after the above-named contract had been awarded, General Bash made a revised decision that the wages for bricklayers on this project would be $13 per day.

I have cited at length this specific operation to try to demonstrate to you, what a pernicious condition this law has developed among our responsible contractors. There is no doubt in my mind that it has utterly failed of its purpose and is drawing the legitimate and responsible contractor from the field of Government work. The only way we can meet competition is by letting out our work to irresponsible subcontractors, handling the work by piece work or some other subterfuge, which does not fit in with the operations of the honest and responsible contractors.

This matter is in such a topsy-turvy condition that we have a condition right here in Shreveport, where the Treasury Department has established one wage and the War Department another wage for the same crafts in the same vicinity. This matter is vital to our entire community, for the reason that the Barksdale Field operation is by far the largest construction in this territory and the wages established there will prevail over the balance of this territory. Our investing public absolutely refuses to proceed with any construction work until these high wages are readjusted, which is just another condition developed by this law under its present workings.

I would appreciate your early comments on this matter for we in the Shreveport chapter feel that it has put us right up with our backs to the wall.

Very truly,

SHREVEPORT CHAPTER, ASSOCIATED GENERAL CONTRACTORS,
By K. C. WILSON, *President.*

Murphey Pound, general contractor, Columbus, Ga., has reported to us the following cases:

"We might cite our own experinece in connection with the injustice that this law has inforced upon us in connection with a contract we are now completing for the United States Government at Fort Benning, Ga. During last year we entered into a contract with the Government to build some 75 quarters at Fort Benning. At that time the prevailing-rate-of-wage law had not been passed. The scale of wage that we paid under this contract was, we considered, fair and

above the wage being paid in and about this Government reservation. Soon after the passage of this prevailing-rate-of-wage law we submitted a bid for the construction of a barracks building at this same post. In preparing our bids we sought information from the constructing quartermaster and others in authority in connection with the bid we intended to submit as to what the prevailing rate of wage was at this Army post. We were informed by the constructing quartermaster that he was not authorized to give any information as to what the prevailing rate of wage scale was, but that he considered the scale that we had been paying, and other contractors at this same post had been paying for several years past, to be the prevailing scale. We were informed that we would have to use our own judgment in determining what the prevailing scale would be, but that certainly we were in as good position as anyone to determine what the prevailing scale was.

"We were the successful bidder on this project for which we submitted bid. Soon after the award of the contract, we were notified by the contracting officer, Quartermaster General's office, that the prevailing scale on certain classes of labor had been determined to be a certain rate. The rate determined on these certain classes of labor was in one case as much as 50 per cent higher than had ever been paid before at this post or in this vicinity. The scale of wages on other classes of labor was, in some cases, 25 per cent to 30 per cent higher than had been paid in the past few years at this post. We protested the ruling, but our protest was ignored, and we were forced to pay a scale of wage 50 per cent higher than is customarily paid in this vicinity on certain classes of labor. Not only this, but for the same class of labor we were paying a higher scale of wage than the United States Government is paying. The United States Government at this post is doing a great deal of work on a purchase-and-hire basis, and we are compelled under our contract to pay certain classes of labor a higher scale than the Government themselves are paying.

"The penalty incurred by us as a result of this unfair discrimination has been severe. On one particular class of labor the same contracting officer has not been consistent in setting up the prevailing scale. For instance, at Maxwell Field, Montgomery, Ala., which is only about a hundred miles from Fort Benning, a lower scale of wage on certain classes of labor has been set up as a prevailing scale. The conditions at Maxwell Field and at Fort Benning are as near identical as to living conditions and general availability of labor as could be."

Another case of the same purport is reported by Agostini Bros., general contractors for the post office at Camden, N. J., as follows:

"Not long ago we started construction on a post office in Camden, N. J., and immediately thereafter the union delegates from Philadelphia and other parts of New Jersey woke up and jumped upon us, demanding the enforcement of many union rules that never existed before in that locality, basing their contention that as long as we were to pay the prevailing scale of wages we might just as well use union help. The matter was first referred to the Supervising Architect, and the writer explained to Mr. Wetmore that if the specifications were drawn up stating what the prevailing scale of wages was for the different building crafts, then we could be held to it. However, he referred the matter to the Labor Board, and after many conferences were held showing to the Labor Board that the union wages could not be considered as those that were prevailing in Camden, N. J., this board ruled unfairly against us."

We could go on indefinitely citing these cases from every part of the country, but we do not wish to tax your patience unnecessarily, although we do wish to cite one other case which, in our opinion, proves an unjustifiable interference on the part of the Department of Labor. The case involves the Upchurch Construction Co., of Montgomery, Ala., who have the contract for the construction of the post-office building at Hobart, Okla. This firm is not a member of our association, but it and many other nonmember contractors are joining with us in our fight against the inequitable and indefensible provisions of the present law.

This case shows that a complete agreement as to the wage scales to be paid on this job was reached at a meeting between the contractor's superintendent, the Government's construction engineer, the postmaster and mayor of Hobart, the secretary of the local chamber of commerce, and representatives of the trades and labor employed in the erection of the building. There was complete agreement in this town as to what the wage rate should be. There was no dispute. Nevertheless, the Secretary of Labor, ignoring the provisions of the Davis-Bacon law that he should intervene only in the case of a dispute which could not be

settled by the contracting officer, did in this case inject himself and cause the following letter to be sent to the contractor:

TREASURY DEPARTMENT,
Washington, D. C., February 29, 1932.

UPCHURCH CONSTRUCTION CO.,
Montgomery, Ala.

GENTLEMEN: Reference is made to your contract dated August 29, 1931, for the construction of the post office at Hobart, Okla.

Under date of the 23d instant, the Secretary of Labor states that the following rates are the prevailing wage rates existing in the Hobart district, and demand is hereby made that you take the necessary steps to pay same, in so far as these rates may affect the work under your contract: Bricklayers, $1.25 per hour; carpenters, 75 cents per hour; common labor, 30 cents per hour.

Your failure to comply with the provisions to pay the prevailing rate of wages constitutes a breach of your contract, and it is requested that you advise the department immediately what steps shall have been taken by you to comply with the terms of your contract and the law in this particular.

A copy of this letter has been forwarded to the construction engineer for his information.

Respectfully,

FERRY K. HEATH,
Assistant Secretary of the Treasury.

We believe that the Upchurch Construction Co.'s reply to the Treasury Department is worthy of your attention as illustrating the unfair tactics that are being used against general contractors under this law. The letter is as follows:

MONTGOMERY, ALA., *March 5, 1932.*

Mr. FERRY K. HEATH,
Assistant Secretary of the Treasury, Washington, D. C.

DEAR SIR: With reference to our contract for the construction of United States post office at Hobart, Okla., and particularly to your letter of February 29, 1932, demanding that we pay certain wage rates, and requesting that we advise immediately what steps would be taken by us to comply with these demands:

Our interpretations of the specifications regarding the "Rate of wage," as set forth in paragraph 9–A of the specifications is that a dispute must arise before the Secretary of Labor enters into the matter at all.

Since December 4, 1931, we have had no dispute whatever at the job regarding rate of wages paid.

On December 4, 1931, the construction engineer, Mr. John F. Posey, reported to our superintendent that he was in receipt of a telegram from the Treasury Department regarding labor wages.

Our superintendent had a meeting immediately with the construction engineer, the postmaster of Hobart, the mayor, the secretary of the chamber of commerce, and representatives of trades and labor employed in the erection of the building. The different rates of pay were discussed at this meeting and it was decided that the correct rates of pay to apply to this building were as follows: Common labor, 25 cent per hour; carpenters, 50 cents per hour; bricklayers, 75 cents per hour.

We immediately adjusted all rates at the job to conform with this scale and no further dispute has arisen.

At the time that we bid on the Hobart post office we were working on our contract for the construction of the post office at Frederick, Okla., which is only a short distance away from Hobart and we had our representative at Frederick go to Hobart to make a complete investigation from every available source of information as to the rates paid at Hobart, so that we would know what the prevailing rates were. Our bid was based on this information, but we are actually paying rates now in excess of those on which our estimate was based. We therefore feel that we are complying with the law in every respect.

On February 4, 1932, the writer was at Hobart, in company with Mr. Irving D. Porter, district engineer of the Treasury Department, stationed at Dallas, Tex., and Mr. John F. Posey, the construction engineer. While he was there Mr. Posey received a telegram evidently instructing him to make an investigation of local wage rates.

Mr. Posey, the construction engineer, together with Mr. Porter, the district engineer, made this investigation while the writer was in Hobart. They conferred with the men on the job and with citizens of Hobart and on completion of their

investigation expressed themselves as satisfied that we were complying with the law.

On the following day a representative of the Department of Labor, in company with a bricklayers' union representative from Oklahoma City, visited the job and conferred with the writer, who had remained in Hobart.

The bricklayers' union representative, Mr. Blaine Swain, stated that he could fix things if we would allow him to bring in a group of union bricklayers from Oklahoma City.

Since we had agreed to use local labor as far as possible and were doing so, we did not feel called upon to discharge our local bricklayers, who are also union men, in order to allow Mr. Swain to import union bricklayers from Oklahoma City.

Mr. Swain also mentioned that bricklayers from Clinton, Okla., had complained that they had not received employment. However, he did not appear to be interested in the Clinton men, but in his own Oklahoma City men, although Clinton is only 60 miles away and Oklahoma City is some 150 miles.

Although there still was no dispute at the job regarding wage rates, another Department of Labor representative visited the job about the middle of February.

We are able, if it is necessary, to present to the Treasury Department, affidavits from Hobart business men, such as Mr. Jim Durant, who employs more labor, perhaps, than any other one employer in Hobart, or Mr. Leonard Portwood, of the Portwood Construction Co., who will state that we are paying rates equal to or greater than the local prevailing rate of wage, and we will appreciate the opportunity of furnishing you with complete information substantiating our claims.

Since we were not aware of any complaints, nor had any disputes with our men, we think we should have been given some opportunity to give our side. Will you please advise?

We can assure you that we have not only made no attempt to break down any wage rates in Hobart, but to the contrary have made every attempt to comply with the law in every respect.

Respectfully,

UPCHURCH CONSTRUCTION CO.,
By W. K. UPCHURCH.

It has been our idea that the function of the Department of Labor was to conciliate labor difficulties and not to incite them as it clearly has done in this Hobart post-office case. It is our understanding that the Secretary of Labor has used the argument that to have his department predetermine wages would incite dispute and that the proper function of that department is to prevent and settle disputes and that every effort should be made to avoid putting it in a position that would provoke dispute. We believe that if the Secretary of Labor entertains such views he should at least be consistent and restrain his department from injecting itself into any case under postdetermination until some dispute has arisen and has been referred to him by the head of the department concerned. This, however, has not been the case. There is ample evidence that the Department of Labor has had its field men out conferring with organized-labor officials, and to say the least, encouraging disputes as to the wage rate being paid on the various Government jobs. Every bit of correspondence that we have seen from the Treasury Department advising contractors that there is question as to whether or not the prevailing wage is being paid on their jobs clearly indicates that these questions originated with the Department of Labor and not as a result of complaints originally filed with the contracting officer concerned, as is contemplated under the provisions of the Davis-Bacon Act.

We claim that if the Department of Labor has sufficient personnel to send men out to a community where Federal construction is going on, with no labor difficulty, and through conferences with organized labor leaders from a community 150 miles from the site of the construction, foment a dispute, then surely the Department of Labor has sufficient personnel to secure a predetermination as to what the prevailing rate of wage may be in any community.

BENEFITS CONTAINED IN S. 3847

We will now invite your attention to some of the benefits to labor, the general contractor and the public which we believe would accrue from enactment of the bill before you (S. 3847).

S. 3847 is intended to modify the objects sought to be accomplished by the act of March 3, 1931 (46 Stat. 1494), known as the Davis-Bacon bill, in the interest of labor in the following particulars:

(1) To extend the benefits of the act to all contracts of the United States in excess of $5,000 for public work, whether these contracts be for public buildings, digging irrigation ditches, river and harbor work, construction of dams or other kind of public construction work.

(2) To extend the benefits of the act to unskilled labor on such public work.

(3) To require the United States, when it performs public works with public equipment and day labor, to pay the same prevailing rate of wage that contractors must pay on public buildings.

(4) To insure that laborers and mechanics employed on public work secure the prevailing rate of wage, that is, to place teeth in the existing law for its enforcement.

Whoever denies these benefits for labor contained in this bill, which are not contained in the Davis-Bacon Act, is either deliberately or otherwise misleading labor. Public building construction is a small part of Government construction work. Moreover, the great majority of employees on public building projects are members of the skilled trades, such as masons, bricklayers, carpenters, who are in many cases highly organized and whose wages run from $6 to $15 a day or more. They are the men benefited by the act of March 3, 1931, but the great unorganized class of common laborers have no representation in the building trades and the wages of common laborers are small, ranging from about $2 in some places to $4 or a little more in other places. But, as we have stated, comparatively few common laborers are employed on buildings and so the Davis-Bacon Act in fact operates for the protection of mechanics and skilled laborers or artisans who in fact are and have been for a long time paid the highest wage in the public building industry.

The class that needs protection from cuthtroat competition most of all is the unskilled and they need this protection just as much in other public construction work as they do in public building work. Likewise, if there is any argument for the protection of skilled laborers on public building work, that argument applies with equal force to any other public construction work.

Neither the Secretary of Labor, the American Federation of Labor, nor any true friend of labor can argue that the workmen on public buildings should be protected and that by far the larger element of labor, both skilled and unskilled, engaged in other construction work, whether employees of contractors, subcontractors, or the Government, performing such work by public plant and hired labor, should be denied such protection. It is certainly difficult to understand how either the Secretary of Labor or the American Federation of Labor can justify their position in attempting to secure and extend privileges to the building trades engaged on public buildings and oppose such extension to labor engaged on public construction work generally.

Either laborers and mechanics employed on public buildings should not enjoy the benefits of a particular wage or the benefits should be extended to all laborers and mechanics employed on all public work, whether by contractors, subcontractors, or by the Government itself.

Any thinking man can see at a glance that the Davis-Bacon Act is a delusion and a snare. There is no criterion set up in that act as to what shall constitute the "prevailing rate of wage," whether it shall be the lowest, highest, the average of the two or some other amount, including the union scale. Constrctors must, in preparing their bids, guess at the amount which will be declated the prevailing rate and, of course, the contracts are let to the lowest responsible bidder. The consequence is that a contractor must cut his labor cost to the minimum that might be considered the pevailing wage in order to secure a contract for a public building or other public work. If the wages are subsequently forced higher than the amount included in the accepted bid for a public building and the contractor has not included a sufficient unmarked item to absorb the higher rate of wages, he may be forced into bankruptcy or the Government may cancel his contract.

The Executive order of the President along with the Davis-Bacon Act affords no protection to labor. The cancellation of the contract may punish the contractor by denying him possible profits, but it will certainly save him from losses due to the increased wages unless the Supreme Court of the United States should uphold the Executive order and the act of March 3, 1931. It seems inconceivable that that high court would sustain such exparte proceedings as the Executive order and the act of March 3, 1931, which would take away from a contractor vested property rights without his day in court.

It is not without significance that the Supreme Court of the United States and the higher courts of at least two sovereign States of this Union have held invalid and unconstitutional enforcing prevailing-wage laws. If the prevailing-wage

law is to stand in face of those decisions, it must be fair to labor, to contractors, and to the public with an adequate right for the parties to be heard.

S. 3847 corrects injustice and removes the cause of possible litigation. Through the penalty provision, either the contractor must pay the established rate of wages on the public work or he is penalized and a sufficient amount of the penalty is directed in the bill to be used to pay labor the difference between the established rate and the rate actually paid. There is also prevented the pernicious practice of secret agreements between contractors and laborers whereby laborers and mechanics rebate or return a part of their wages to the contractor; and laborers and mechanics are prevented from cutting their own wages below the established rate of wage in order to secure or take a job from a fellow laborer. Any bill to be fair to all concerned should protect laborers against price cutters within their ranks and should likewise protect contractors against price cutters on wages within their ranks. In other words, both laborers and contractors should have such protection that the game of business may be fairly and squarely played.

As a matter of inducement to contractors to bid on public construction work to submit their lowest possible prices, this bill provides:

(1) That the prevailing rate of wages shall be determined and stated in the advertisement for bids and shall be adjusted up or down by the Secretary of Labor as the work progresses, or every three months where the contract requires more than that period for completion;

(2) That in the event of any increase or decrease in wages, the contract price shall be increased or decreased by the amount of the increase or decrease in wages.

This is surely the least that contractors could ask or accept. If the Government must control the rate of wages to be paid under contracts for public works, then the Government should name the rates of wages which are to be used as the basis of competition between contractors, and the Government should absorb the amount of any increase or decrease in wages above or below the amount so named. This is no more than common honesty on the part of the Government toward both contractors and laborers and it does not involve or commit the Government to price fixing.

We desire to make this point very emphatic. Neither the Davis-Bacon Act nor this bill contemplates that the Government shall go into a community and artificially raise the prices above those prevailing in that community. The terms of the Davis-Bacon law and this bill very clearly use the phrase "prevailing rate of wages," in other words, instead of fixing wages, as has actually been done under the Davis-Bacon bill, and contrary to its terms, the law contemplates that the officer named therein shall find as a fact the prevailing wages which are being paid. This bill is the farthest from a price-fixing bill. On the other hand, it merely places a requirement on the department to state as a fact the rate of wages which prevails in the community where the work is to be performed and in the same manner and to the same extent that the departments are now required by law to name in their specifications the kind or class and grade of material that enters into the construction of the building. The fact of the kind, class, or grade of material is advertised to all prospective bidders in the specifications. Of course, if only material is involved the contracts will in the long run go to the more efficient contractors—the ones who are able to secure the prescribed material at the lowest cost and who are able to so plan and conduct their work with the greater efficiency. Prior to the act of March 3, 1931, the cost of labor was also an element in competition on public buildings and the contractor who could secure cheaper labor, who paid the lowest wages to labor, was able to in many cases secure public-building contracts and he is now able to secure other public-works contracts even though he is considerably less efficient in the purchase of material and the planning of work than some other contractors who will not cut wages.

We need not remind this committee, the Congress, or the country that such conditions came about through no fault of the contracting industry, but was solely due to the competitive conditions which Congress had itself established, maintained, and required to be enforced.

It is no correction of that condition to attempt, as in the act of March 3, 1931, and the Executive order, to throw on the contracting industry the burden of attempting to protect labor and at the same time maintain all of those competitive conditions which brought about the need for correction. Such a casting of the burden on the construction industry, particularly that part engaged in the erection of public buildings, with maintenance of existing competitive requirements, can but result in one of two things, both highly undesirable.

Either the better class of contractors will be driven from public construction work, leaving the field occupied by the irresponsible, untrained, and inexperienced contractors or the burden will be shifted to the depleted Treasury of the United States. Whatever leads to uncertainty and risk results in increased cost in an attempt to insure against such uncertainties and risks. The construction business is a business conducted on business principles and not a gamble, except in the most hazardous construction work. The prudent contractor must add to his bid whatever sum he believes necessary to protect him in the event the uncertainties and risks are encountered during the period of operations which may be over a period of several years. The contractor lacking such prudence may and frequently does secure the contract and then fails when such uncertainties and risks materialize against him. In such a case, the surety or the Government is required to complete the work and not infrequently labor and material men suffer large losses for the reason that the Government has priority on the surety bond. The Government's losses are paid first, even if a dime is not left for labor and material men and subcontractors.

Does this committee, the Congress, the country or labor desire to foster maintaining competitive conditions with these results as the inevitable consequence? Surely not this without regard to the spirit of fair play toward the contracting industry, a spirit which is the keystone of our form of Government.

The only method by which such protection as may be needed may be extended to labor, and contractors placed on an even basis for competition is to remove labor as one of the competitive factors in the letting of public contracts. This Congress has declared that labor is not a commodity and if that be true, then the United States Government should not maintain and enforce a policy which results in labor being placed on a competitive basis with the law of supply and demand as the controlling factor as it is in materials. To remove labor as a competitive factor it is necessary that wages be predetermined; that is, ascertained and stated in the advertisement for bids with a provision for readjustment of the wages up or down in event they have been improperly determined in the first instance or the work should extend over considerable periods when there may be fluctuation in wages. It should require no argument to demonstrate to such seasoned men as the members of this committee the desirability and necessity for such a course of procedure in event it is considered a matter of public policy for the Federal Government to control the wages paid on public construction work.

The Secretary of Labor apparently contends that his force is insufficient to ascertain as a fact the prevailing rate of wages being paid in a community where the work is to be performed and this, notwithstanding the fact that the Federal Government appropriates several millions of dollars a year for the support of that department and it has a Bureau of Labor Statistics which collects and publishes from time to time the union rate of wages throughout the United States and, as we understand, is also able to and does collect statistics concerning nonunion rates of wages in various sections of the country.

If the Secretary of Labor is unable, with these large appropriations and his Bureau of Labor Statistics, to ascertain as a fact the wages being paid in any locality, then we submit that the contracting officers of the various departments who draft and advertise the specifications for public work should be authorized to state in the specifications the prevailing rate of wages which must be paid unless they are subsequently readjusted by the Secretary of Labor. If it be his claim that it would impose too large a burden on his department to ascertain in advance the prevailing rate of wages in any locality, then that duty can be performed by the contracting officers of the Government who have knowledge of wage conditions or who may readily secure such knowledge.

We are not particularly concerned whether the Secretary of Labor or the contracting officer determines the rate of wages, but we do insist that the prevailing rate of wages be determined as a matter of fact before the work is advertised; that these rates of wages for the respective classes of labor and mechanics be stated in the specifications; and that the compensation paid the contractor for performance of the work be readjusted up or down as the rate of wages is readjusted up or down.

Such procedure is not only common fairness to the contractors, but will operate to secure for the Government conservative and principled classes of contractors and at the same time will operate to protect the Treasury of the United States against unnecessary costs which must be included in the bid of the prudent contractor to protect him against the action of the Secretary of Labor in increasing the wages.

In conclusion, we wish to frankly state that our appeal to Congress, which we have just made through this committee and which no doubt has taxed your

patience because of its length, is a final effort on the part of responsible organized general contractors to have the glaring weaknesses and injustice of the present law corrected by proper legislative action before resorting to the courts for relief. Litigation in regard to this subject is undesirable and unwholesome from many points of view, especially in these times of economic depression when every legitimate protection should be afforded the working man. With this in mind we have until now exerted our utmost influence to check the pronounced individual inclination to immediately challenge the constitutionality of the Davis-Bacon Act in the courts. We have succeeded in doing this by convincing aggrieved contractors that Congress would recognize the inequities of the present law and would amend it. We sincerely trust that your early favorable action on S. 3847 will prove the wisdom of our stand.

Mr. GREEN. Do you remember whether or not, before the Senate committee, the American Federation of Labor went on record for the Metcalf amendment?

Mr. HARDING. Not to my knowledge. Mr. Hushing, chairman of the legislative committee of the Federation, appeared on the question of the constitutionality of it.

Mr. GREEN. You have presented here the indorsements of the Nebraska Federation and the Rhode Island Federation.

Mr. HARDING. Yes.

Mr. GREEN. They have both indorsed it; is that correct?

Mr. HARDING. That is correct. I understand some others have, but I have not the facts about that.

Mr. Chairman, if I might clarify the statement made this morning in answer to a question which I think Mr. Welch asked as regards our opinion as to how the executive order will affect the contractor, we believe that under the executive order of January 19, a contractor's contract is abrogated in the event that he does not pay the prevailing rate of wages. We believe that to be so.

We also believe, if we interpret this Executive order properly, that all contractual relationships between the contractor and the laborer are wiped out by this order.

Mr. RAMSPECK. That is the question I asked Mr. Kaiser. If the contractor had an agreement with a union organization contrary to the rate set under the Executive order, as I understand you, you construe that such a contract would be abrogated.

Mr. HARDING. That is the way we interpret it; yes, sir. A contractor who signs a contract with the Executive order incorporated in the contract absolutely binds himself; but by the same token, if, for example, a chapter of our organization in St. Louis, had an agreement with the Building Trades Council of St. Louis, under our interpretation of the Executive order, such trade agreements would not hold.

Mr. RAMSPECK. Then if the rate set under the Executive order was lower than the rate prescribed in your agreement in St. Louis, you would be forced to pay less wages than you had agreed previously to pay to organized labor?

Mr. HARDING. That is the way we interpret it, Congressman.

Mr. CHAIRMAN. I have one other witness that I would like to present, if I may be permitted to do so. I would like to introduce to the committee Mr. Hervey J. Drake, attorney for causalty and surety executives.

STATEMENT OF HERVEY J. DRAKE, ATTORNEY FOR CASUALTY AND SURETY EXECUTIVES

Mr. DRAKE. Mr. Chairman, I think there is only a little that I need to say.

As I view the bill and its purpose, the effect is merely to give some security to contractors and their sureties in entering into contracts with the Government for public works construction.

At the present time some wages are going down. At the same time experience has shown, and the record of the bill in the Senate shows, that after contractors have entered into these contracts wages have been placed on a higher basis in a great many cases, and the ordinary contractor is placed in the position of having, in effect, to build a larger project for the same contract price.

I do not think there is much danger of there being a reduction in wages, because in practically every case that has been brought to the attention of contractors associated with those projects, they have to pay more.

They do not object to that if they do not get stuck with it. They are placed in the position of agreeing to erect a 10-story building and then they are compelled to erect a 12 or 15 story building for the same price.

This bill is absolutely fair to labor. The rate is to be determined by the United States Department of Labor and not by the contractors, and no one can claim that the United States Department of Labor is biased in favor of the contractors or the sureties. They have shown every evidence of being unusually fair to labor. Labor, it seems to me, can surely safely trust the United States Department of Labor to look after their interests.

I have personal knowledge of the position taken by the labor organizations of the State of New York. Early this year I was in Washington on a matter in which the surety companies were interested with the contractors' association, and at that time Mr. Harding, representing the contractors' association, was just giving consideration to this proposed bill. He gave me a copy of this proposed bill.

It so happened that within the second day afterward there was a hearing in Albany, N. Y., on the prevailing rate of wage bill there. I was at that hearing, and I offered this amendment to the bill. Mr. O'Hanlon, the legislative representative of the New York Federation of Labor, was there, and asked some questions about it. He asked me to give him a copy of it. He said he could not see any objection of it.

I had a conference with him after the hearing was over and he asked me to send him a copy of the amendment, which I did, and the following week, when I was in Albany, I went over it with him again and he said he could see absolutely nothing unfair to labor about it or any reason why they should be opposed to it. There were some other complication in reference to the bill and the bill was not passed.

But Mr. John M. O'Hanlon stated flatly there was nothing in it that would be prejudicial to labor. And I can not see why there should be.

So far as the constitutionality of it is concerned, I can not see myself how it would be unconstitutional. As a matter of fact, already the wages are predetermined, only it is not in the specifications in the

contract. Now, when a contractor makes an estimate on a job he goes carefully into the question of wages.

Mr. RAMSPECK. That is after he has made his bid and gotten his contract?

Mr. DRAKE. Yes; but he sounds out the market pretty thoroughly before he enters his bid, so he will know where he stands.

As has happened in a number of cases, that rate has been increased after he has entered on to the job, and naturally, without any provision that that should be added to the contract price to be paid by the Government that has to come out of him.

I do not know that the same situation would arise as seriously as happened in 1918 in New York and in other States, but the principle is the same, possibly in a lesser degree.

I know that in New York in 1918 contractors had entered into large contracts with the State of New York for the construction of public works, and when we entered the war there came a scarcity of labor and the price of labor went up so high that practically every contractor in the State engaged in public work was in danger of bankruptcy.

A law was enacted relieving contractors and providing that on all contracts entered into before a certain date, the contract price should be on a higher wage basis, and the amount added to the contract price.

If it had not been for that I think practically every contractor engaged in business with the State at that time would have gone into bankruptcy.

The same possibility, of course, is here. We hope the conditions will improve and that labor will receive higher prices, but, at the present time, the contractors and the sureties are faced with the possibility of having to erect a 15-story building, where they bid on a 10 or 12 story building for the same price, and you can see that difficulty would inevitably result.

Mr. RAMSPECK. What change, if any, has taken place in the attitude of the surety companies since the issuance of the President's Executive order?

Mr. DRAKE. I think they are pretty scared. It seems somewhat like buying a pig in a poke, when you do not know what you are buying. A surety company which engages to guarantee the performance of a contract is placed in the same position as the contractor.

Mr. RAMSPECK. Do you know of any instances where that has happened?

Mr. DRAKE. I do not know of a particular instance; I have not had it called to my attention. I know that after the Executive order came out the surety companies have been much worried, because, as I understand it, the Executive order is to apply not only to future contracts but to contracts which have already been entered into.

Mr. KOPP. Have you increased your rates?

Mr. DRAKE. I really can not say. I have not seen the rates; I have not followed that end of it. I am not connected with a surety company. I represent an association of casualty and surety companies in which are practically all of the nation-wide stock and casualty surety companies. I have had talks with various company officials, and they have appeared very much worried about the situation.

Mr. RAMSPECK. Are any of them refusing to give bonds on these contracts?

Mr. DRAKE. Mr. Storey, of New York, has had much more intimate contacts than I have, and I think he said the surety companies are tightening up considerably.

Mr. HARDING. I understand, Mr. Chairman, there is some opposition to this bill. I want to call attention to the bill.

In the Metcalf bill you will note it also includes public works.

In reference to the question that was asked as regards the Connery bill, the only question in the minds of the Associated General Contractors was this question of indefiniteness. We think that predetermination would probably take care of it, because we wondered how, unless you had a ruling of the Secretary of Labor on each individual case, you could determine the rate of wage for a man and his wife with one child as against a man and his wife with six children. We think that predetermination would answer it.

The CHAIRMAN. You have no further witnesses, Mr. Harding?

Mr. HARDING. That is all.

The CHAIRMAN. Are there any other proponents here who care to be heard? [After a pause.] If not, we will hear the opponents.

STATEMENT OF HENRY C. HUNTER, COUNSEL FOR THE NATIONAL COUNCIL OF AMERICAN SHIPBUILDERS, AND THE NEW YORK AND NEW JERSEY DRY DOCK ASSOCIATION

Mr. HUNTER. Mr. Chairman, I am counsel for the National Council of American Shipbuilders, and also for the New York and New Jersey Dry Dock Association. In the membership of those organizations are a majority of the large shipyards engaged in the construction of Government vessels.

The National Council of American Shipbuilders includes in its membership the larger percentage of those companies in the United States that build and repair vessels of all types, including Government vessels, and companies that manufacture equipment and accessories used in their construction and operation.

Senate bill 3847, entitled "An act to amend the act approved March 3, 1931, relating to the rate of wages for laborers and mechanics employed by contractors and subcontractors on public buildings," has been passed by the Senate. This bill is now before the House Committee on Labor.

The bill contains, among others, the following provisions:

> That the advertised specifications for every contract in excess of $5,000 for construction, alteration, or repair of public buildings or public works in the District of Columbia or in any city, town, village, or other civil subdivision of any State, to which the United States or the District of Columbia is to become a party and which requires or involves the employment of mechanics or laborers shall contain a provision stating the prevailing rate of wages as determined by the Secretary of Labor, for various grades of mechanics and laborers for work of a similar nature in the District of Columbia or in the city, town, village, or other civil subdivision of any State in which all or the principal part of the particular contract work is located, and every contract for the construction of public buildings or public works to which the United States or the District of Columbia shall become a party shall contain a stipulation that the contractor and his subcontractors shall pay the mechanics and laborers employed directly on the site of such work at not less than the rate of wages stated in the advertised specifications.

The act of March 3, 1931, is confined to the construction, alteration, and repair of public buildings, and the effect of the proposed amendment, among other things, would be to broaden its scope of

the act by including within its provisions "public works." The term "public works", when used in the statutes of the United States, has been interpreted by the United States Supreme Court to include Government vessels. (Title Guarantee & Trust Company *v.* Crane Company, 219 U. S. 24.) Therefore, the proposed amendment, if enacted, would so amend the act of March 3, 1931, as to include within its provisions the construction, alteration, or repair of Government vessels in private shipyards.

The proposed amendment would further amend the act of March 3, 1931, by requiring the Secretary of Labor to determine the prevailing rate of wages to be paid workmen employed in the construction, alteration, or repair of Government vessels and by also requiring that the advertised specification for such work and the contract for its performance shall contain the prevailing rate of wages, as determined by the Secretary of Labor, to be paid by contractors and subcontractors to mechanics or laborers employed thereon at the site of the contract work.

As a preface to its discussion of the bill and in order that the committee may more fully understand the reasons for the council's opposition to it, the council submits the following comments for the consideration of the committee:

The construction, alteration or repair of Government vessels by private contractors and subcontractors is usually performed in, or in the immediate vicinity of, the large seaport cities where public and private buildings are constructed. In both the construction of such buildings and in the construction, alteration or repair of Government vessels many of the same crafts of workmen are employed such as riveters, welders, carpenters, joiners, pipefitters, plumbers, electricians, painters, decorators, each of whom receives a much higher rate of wages in building construction where employment is more unstable and less continuous than in ship construction.

In a private shipyard the construction, alteration or repair of Government vessels and of merchant vessels and the installation of their machinery and equipment are performed contemporaneously by the same crafts of workmen.

When the Government advertises for bids to construct new vessels or to alter or repair its vessels, it receives bids to perform such work from shipbuilding companies which operate yards in the several seaports of the United States and in each of which the prevailing rate of wages paid shipyard workmen is usually different from that paid in the other seaports.

The council respectfully protests against the enactment of the bill unless the construction, alteration or repair of Government vessels is excluded therefrom for the following reasons:

It is a fair implication from the text of the bill that the rate of wages of crafts of shipyard workmen employed in the construction, alteration or repair of Government vessels by private contractors or subcontractors may be determined, as therein provided, not by the prevailing rate of shipyard wages for such crafts but by the ages paid such crafts in other industries such as the building industry which are notoriously higher than in almost every other industry. To impose such a wage on the construction, alteration or repair of Government vessels in private shipyards would enormously increase the cost of such work and would require the shipyard to correspond-

ingly advance the wages paid by it to workmen employed in the construction of such private work, because it is impracticable to operate a shipyard by paying a differential in wages to the same crafts of workmen employed on public and private work.

The greater cost of construction of merchant vessels in the United States than in foreign countries is due to the higher wages now paid in domestic than in foreign shipyards. It is the principal handicap under which the United States labors in its endeavor to upbuild and maintain a merchant marine of American-built vessels. The result of the enactment of the bill would, it is believed, tend substantially to increase this handicap.

The workmen employed in shipyards constitute a permanent force whose wages are determined by agreement between them and their employers and these relations should not be disturbed by any outside agency such as the Secretary of Labor, who, of necessity, can not be familiar with the operation of a private shipyard and can not be in a position to deal intelligently with the qualifications of such workmen and their wages.

The Secretary of Labor would find it impracticable, if not impossible, to fix the wages of workmen employed in private shipyards in the construction, alteration, or repair of Government vessels and in the installation of their machinery and other equipment for the reason that the construction, alteration, or repair of a Government vessel and particularly of a naval vessel is an involved, technical, and complicated undertaking, requiring the services of at least 40 different crafts. The subcontractors who will perform work or install machinery or equipment in a vessel to be constructed or repaired in a private shipyard under a Government contract are not definitely known until after the negotiations for the contract are completed and prices are definitely fixed. Therefore the wages to be paid by such contractors could not be embodied in the advertised specifications for the work or in the contract for its performance.

Bids to construct, alter, or repair Government vessels are received from contractors operating shipyards in different seaports. To comply with the requirements of the bill to amend the act of 1931 it would be necessary for the Government to insert in its advertised specifications the wages to be paid in each port because it could not determine the site of the shipyard of the successful bidder until after the bids had been received and opened.

In view of the foregoing objections to the bill, the council believes that it was not the intention of its proponenets to include within its provisions contractors or subcontractors engaged in the construction, alteration or repair of Government vessels and to remove any doubt as to its application to them it should be amended so that they will be excluded therefrom.

The council has submitted a somewhat similar protest to the bills H. R. 7005, H. R. 7254, and House Joint Resolution 38, to amend the act of March 3, 1931. The bill H. R. 11200 amending the act which was reported by the House Committee on Labor continued public building therein and extended its application to the "Construction, alteration and/or repair including painting and decorating of dams, locks, bridges, or the installation of machinery thereon, flood-control work and dredging or any other manner of rivers and harbors construction work."

Mr. RAMSPECK. Your chief objection, as I understand it, would refer to the price you would have to pay labor on this work?

Mr. HUNTER. That is one of the objections and the other objection is the impracticability of predetermined wages on construction where bids would be received from different seaports and where the work will be performed in different seaports. In other words, you can not predetermine the yards in which a vessel is to be constructed.

Mr. RAMSPECK. Why should a shipbuilder object where the Government submits to you a contract to build a certain ship under which the wages you are to pay are so much? If they should be increased, why, of course, the Government would take care of the difference.

Mr. HUNTER. That is not our particular objection. Our particular objection is as to the requirement that under the specification the wage is to be determined, and we claim that it can not be done.

Mr. RAMSPECK. It will have to be done under this law if it should pass.

Mr. HUNTER. It will if you include public work.

Mr. RAMSPECK. Is not your real objection due to the fact that it will probably result in your having to pay higher wages?

Mr. HUNTER. That is one very serious fact.

Mr. RAMSPECK. For other than Government work?

Mr. HUNTER. No, sir; that would be involved undoubtedly, but our serious objection, so far as labor cost is concerned, is the increase it would impose on merchant ship construction.

The CHAIRMAN. As the gentleman from Georgia said, in a shipyard you may have a contract to build a Government vessel, and you have to pay a certain prevailing rate of wages. If the Government rate of wages is $11 per day, and you were paying those men in your shipyards $9 per day, the men who were getting $9 per day would make you come up to $11 per day on their work.

Mr. HUNTER. That would be the effect of the law, undoubtedly.

The CHAIRMAN. That is the effect we are after.

Mr. HUNTER. It would be pretty heavy on merchant ship construction, and would increase the capital cost. One of the principal difficulties, as I pointed out, is including in the specifications, or the advertised specifications, the rate of wages when you do not know the site at which the work is to be performed.

Mr. LOVETTE. Why do you not know that? Suppose the battleship *New Mexico* is to be modernized, and you are going to bid on it: The Government will tell you where she will be, will they not? They will tell you what port she will be in. If they are to bring the *New Mexico* to Norfolk to be modernized, you would have that information.

Mr. HUNTER. Are you speaking of the Government doing the work itself or by some contractor?

Mr. LOVETTE. By contract. Suppose you get a contract from the Government to modernize the *New Mexico*, and the Government tells you that it is at Los Angeles or San Pedro, but that she will be brought to Norfolk for the purpose of being modernized. If they sign a contract with you, what would be your trouble?

Mr. HUNTER. The contract would not be performed in the Norfolk Navy Yard.

Mr. LOVETTE. Why?

Mr. HUNTER. Because the private contractors bidding on it would bid to do the work in each of their respective yards.

Mr. LOVETTE. But suppose the Government told you that they were bringing the ship there to have her modernized at Norfolk.

Mr. HUNTER. It is never done at Norfolk, Mr. Congressman.

Mr. LOVETTE. Well, suppose they take the ship to Norfolk, New York, Philadelphia, or somewhere else to be modernized.

Mr. HUNTER. We would take that ship to New York, Fall River, Mass., or Baltimore.

Mr. LOVETTE. In your contract, then, why could you not tell the Government in advance where you would put the ship.

Mr. HUNTER. We can not do it.

Mr. LOVETTE. Why?

Mr. HUNTER. We do not know who will be the successful bidder.

The CHAIRMAN. They have a shipyard at Fall River, and the Government knows where every private shipyard in the United States is located. They can send out bids or specifications to all of those shipyards. The shipyards at Norfolk, Fall River, and other places can bid on the work, and the lowest bidder would get it.

Mr. HUNTER. I doubt if you could get any competitive bidding of that character.

The CHAIRMAN. They are almost all in cities, or in the larger seaport towns. They could easily find what was the prevailing rate of wages in those towns.

Mr. HUNTER. If you were going to accept the prevailing rate of wages, we will say, in Baltimore, or if the work is to be performed in Baltimore, you do not know until after the bids are opened how much is bid by Fall River, how much by New York, or how much by San Francisco. Probably in each one of those cities there is a difference in the prevailing rate of wages.

The CHAIRMAN. You have the same thing in connection with public buildings. The work on public buildings is performed in different cities.

Mr. LOVETTE. If it is cheaper to do the work at Norfolk than at Fall River or Philadelphia, why should not the Government be in a position to take the Norfolk bid and let the others go?

The CHAIRMAN. We are very much interested in the bill pending before the House, and it is nearly 12 o'clock. Mr. Hunter, we will have to ask you to come back again if you wish to submit anything else.

Mr. HUNTER. It is immaterial.

The CHAIRMAN. Of course, you can put anything in the record you desire. To-morrow we will have hearings on another bill, and we will adjourn this meeting over until Tuesday. Would you like to come back Tuesday morning, Mr. Hunter?

Mr. HUNTER. I would be glad to.

NATIONAL COUNCIL OF AMERICAN SHIPBUILDERS,
New York, April 26, 1932.

Hon. WILLIAM P. CONNERY, Jr.,
Chairman House Committee on Labor and Industry, Washington, D. C.

DEAR SIR: The National Council of American Shipbuilders includes in its membership the larger percentage of those companies in the United States that build and repair vessels of all types including Government vessels and companies that manufacture equipment and accessories used in their construction and operation.

Senate bill S. 3847, entitled "An act to amend the act approved March 3, 1931, relating to the rate of wages for laborers and mechanics employed by contractors and subcontractors on public buildings" has been passed by the Senate. This bill is now before the House Committee on Labor.

The bill contains, among others, the following provisions:

That the advertised specifications for every contract in excess of $5,000 for construction, alteration, or repair of public buildings or public works in the District of Columbia or in any city, town, village, or other civil subdivision of any State, to which the United States or the District of Columbia is to become a party and which requires or involves the employment of mechanics or laborers shall contain a provision stating the prevailing rate of wages as determined by the Secretary of Labor, for various grades of mechanics and laborers for work of a similar nature in the District of Columbia or in the city, town, village, or other civil subdivision of any State in which all or the principal part of the particular contract work is located, and every contract for the construction of public buildings or public works to which the United States or the District of Columbia shall become a party shall contain a stipulation that the contractor and his subcontractors shall pay the mechanics and laborers employed directly on the site of such work at not less than the rate of wages stated in the advertised specifications.

The act of March 3, 1931, is confined to the construction, alteration, and repair of public buildings and the effect of the proposed amendment, among other things, would be to broaden its scope of the act by including within its provisions "public works." The term "public works," when used in the statutes of the United States, has been interpreted by the United States Supreme Court to include Government vessels. (Title Guarantee & Trust Co. *v.* Crane Co., 219 U. S. 24.) Therefore the proposed amendment, if enacted, would so amend the act of March 3, 1931, as to include within its provisions the construction, alteration, or repair of Government vessels in private shipyards.

The proposed amendment would further amend the act of March 3, 1931, by requiring the Secretary of Labor to determine the prevailing rate of wages to be paid workmen employed in the construction, alteration, or repair of Government vessels and by also requiring that the advertised specification for such work and the contract for its performance shall contain the prevailing rate of wages, as determined by the Secretary of Labor, to be paid by contractors and subcontractors to mechanics or laborers employed thereon at the site of the contract work.

As a preface to its discussion of the bill and in order that the committee may more fully understand the reasons for the council's opposition to it, the council submits the following comments for the consideration of the committee:

"The construction, alteration, or repair, of Government vessels by private contractors and subcontractors is usually performed in, or in the immediate vicinity of, the large seaport cities where public and private buildings are constructed. In both the construction of such buildings and in the construction, alteration, or repair of Government vessels many of the same crafts of workmen are employed, such as riveters, welders, carpenters, joiners, pipe fitters, plumbers, electricians, painters, decorators, each of whom receives a much higher rate of wages in building construction where employment is more unstable and less continuous than in ship construction.

"In a private shipyard the construction, alteration, or repair of Government vessels and of merchant vessels and the installation of their machinery and equipment are performed contemporaneously by the same crafts of workmen.

"When the Government advertises for bids to construct new vessels or to alter or repair its vessels, it receives bids to perform such work from shipbuilding companies which operate yards in the several seaports of the United States and in each of which the prevailing rate of wages paid shipyard workmen is usually different from that paid in the other seaports."

The council respectfully protests against the enactment of the bill unless the construction, alteration, or repair of Government vessels is excluded therefrom for the following reasons:

It is a fair implication from the text of the bill that the rate of wages of crafts of shipyard workmen employed in the construction, alteration, or repair of Government vessels by private contractors or subcontractors may be determined, as therein provided, not by the prevailing rate of shipyard wages for such crafts but by the wages paid such crafts in other industries such as the building industry which are notoriously higher than in almost every other industry. To impose such a wage on the construction, alteration, or repair of Government vessels in private shipyards would enormously increase the cost of such work and would require the shipyard to correspondingly advance the wages paid by it to workmen employed in the construction, alteration, or repair of merchant vessels and

thereby increase the cost of such private work, because it is impracticable to operate a shipyard by paying a differential in wages to the same crafts of workmen employed on public and private work. The greater cost of construction of merchant vessels in the United States than in foreign countries is due to the higher wages now paid in domestic than in foreign shipyards. It is the principal handicap under which the United States labors in its endeavor to upbuild and maintain a merchant marine of American-built vessels. The result of the enactment of the bill would, it is believed, tend substantially to increase this handicap.

The workmen employed in shipyards constitute a permanent force whose wages are determined by agreement between them and their employers and these relations should not be disturbed by any outside agency such as the Secretary of Labor, who, of necessity, can not be familiar with the operation of a private shipyard and can not be in a position to deal intelligently with the qualifications of such workmen and their wages.

The Secretary of Labor would find it impracticable, if not impossible, to fix the wages of workmen employed in private shipyards in the construction, alteration, or repair of Government vessels and in the installation of their machinery and other equipment for the reason that the construction, alteration, or repair of a Government vessel and particularly of a naval vessel is an involved, technical, and complicated undertaking, requiring the services of at least forty different crafts. The subcontractors who will perform work or install machinery or equipment in a vessel to be constructed or repaired in a private shipyard under a Government contract are not definitely known until after the negotiations for the contract are completed and prices are definitely fixed. Therefore the wages to be paid by such subcontractors could not be embodied in the advertised specifications for the work or in the contract for its performance.

Bids to construct, alter, or repair Government vessels are received from contractors operating shipyards in different seaports. To comply with the requirements of the bill to amend the act of 1931 it would be necessary for the Government to insert in its advertised specifications the wages to be paid in each port because it could not determine the site of the shipyard of the successful bidder until after the bids had been received and opened.

In view of the foregoing objections to the bill, the council believes that it was not the intention of its proponents to include within its provisions contractors or subcontractors engaged in the construction, alteration, or repair of Government vessels and to remove any doubt as to its application to them it should be amended so that they will be excluded therefrom.

The council has submitted a somewhat similar protest to the bills H. R. 7005, H. R. 7254, and House Joint Resolution 38, to amend the act of March 3, 1931. The bill H. R. 11200, amending the act which was reported by the House Committee on Labor, continued public building therein and extended its application to the "construction, alteration, and/or repair, including painting and decorating of dams, locks, bridges, or the installation of machinery thereon, flood-control work and dredging or any other manner of river and harbor construction work."

Respectfully submitted.

H. G. SMITH, *President.*

[Providence Journal April 25, 1932]

LABOR COMMENDS SENATOR METCALF—STATE A. F. L. BRANCH INDORSES AMENDMENT TO BILL FOR PREVAILING WAGE RATE—BURNS RENAMED PRESIDENT—CONVENTION GOES ON RECORD AS CONDEMNING "THOSE IN POWER AT THE STATEHOUSE"

In appreciation of United States Senator Jesse H. Metcalf's amendment to the Davis-Bacon Act which will, if it becomes law, compel the payment of prevailing rates of wages to mechanics and laborers by contractors doing construction work for the United States Government, the Rhode Island State Branch of the American Federation of Labor in annual convention yesterday, adopted the following resolution:

"We, the delegates to the thirty-second annual convention of the Rhode Island State Branch, join with the Providence Buildings Trades Council in commending Senator Metcalf for his good work in behalf of the building trades mechanics and laborers by having passed through the United States Senate his bill in amendment to the Davis-Bacon Act."

The resolution was introduced by the delegates of the Providence Building Trades Council where it had been adopted at the last meeting, with the request that Rhode Island labor, as a whole and as represented by the State branch, add its commendation to that of the building trades members. The measure has passed the Senate and now is in the House of Representatives.

LINCOLN, NEBR.

E. J. HARDING,
Associated General Contractors of America, Munsey Building, Washington, D. C.:

Nebraska State Federation of Labor indorse predetermination of wages, Government construction, and think it a preventative of wage disputes on Government projects during period of construction.

FRED EISSLER,
President Nebraska Federation of Labor.

STATEMENT OF M. J. M'DONOUGH, REPRESENTING THE AMERICAN FEDERATION OF LABOR

Mr. MCDONOUGH. Mr. Chairman, I will ask Mr. Kaiser to remain a minute, because I wish to make a statement while he is present. This morning the question of Boulder Dam was brought up, and I feel that Mr. Kaiser may at least have impressed the committee with the thought that ideal labor conditions prevailed at Boulder Dam. So far as the American Federation of Labor is concerned, we absolutely resent that statement. Mr. Kaiser stated that in submitting his figures for Boulder Dam, his figure was $5,000,000 less than the next figure. That is true, but it is just as Mr. Kaiser has said, because Mr. Kaiser would have a contract for this labor. We must presume that if the other contractor, whose bid was $5,000,000 higher than Mr. Kaiser's bid, obtained the contract, he would have paid that much higher wage scale in the performance of that job. It was also stated that the Boulder Dam contract was awarded prior to the passage of the Bacon-Davis Act. But, nevertheless, Mr. Kaiser, in my opinion, did not take that into consideration when figuring on that job, nor the prevailing rate of wages that obtained in that locality.

Now, the maximum wage for mechanics at Boulder Dam is shown here. I have the records of the committee that visited the place, and, in fact, I talked with Mr. Bechtel, who was the president of the Six Companies, one being in San Francisco, where Mr. Kaiser lives. They gave me a copy of those records. The maximum wage for mechanics, including electricians, carpenters, plasterers, steamfitters, plumbers, and so forth, is 75 cents per hour, but the rate for those trades in that locality is from $2 to $4 per day higher than that. Therefore, I do not want this committee to be of the opinion that, at least so far as the American Federation of Labor is concerned, we believe that ideal labor conditions prevail at Boulder Dam. They do not prevail there. The wage scale is probably satisfactory, so far as Mr. Kaiser is concerned, but so far as organized labor is concerned, it is not. Furthermore, I want to say that at the behest of the American Federation of Labor a resolution was introduced by Senator Ashurst requesting a full investigation of those conditions at Boulder Dam.

I just wanted to make that statement while Mr. Kaiser was here. Mr. Kaiser comes from the same city that I do, Oakland, Calif.

Mr. KAISER. Yes.

Mr. MCDONOUGH. For the benefit of the Congressman from Philadelphia, who referred to $4 per day, you have been in Washington for two summers, and certainly last summer you appreciated the heat that prevails here in that season. Now, I venture to say that if you had to work at Boulder Dam for $4 per day, you would not last 15 minutes. You would have to go to a hospital.

(Thereupon the committee adjourned.)

REGULATION OF WAGES PAID TO EMPLOYEES BY CONTRACTORS AWARDED GOVERNMENT BUILDING CONTRACTS

TUESDAY, MAY 3, 1932.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON LABOR,
Washington, D. C.

The committee this day met at 10 o'clock a. m., Hon. Robert Ramspeck presiding, for further consideration of S. 3847, which is an act to amend the act approved March 3, 1931, relating to the rate of wages for laborers and mechanics employed by contractors and subcontractors on public buildings.

Mr. RAMSPECK. The chairman will not be here this morning and he has asked me to preside.

STATEMENT OF H. G. SMITH, PRESIDENT OF THE NATIONAL COUNCIL OF AMERICAN SHIPBUILDERS

Mr. RAMSPECK. Mr. H. G. Smith, of the National Council of American Shipbuilders is to be heard first this morning.

Mr. SMITH. Last week when you adjourned Mr. H. C. Hunter, our general counsel, was before you and he left a brief in connection with the relation of this bill to the shipbuilding industry.

Mr. WELCH. What bill are we considering?

Mr. SMITH. S. 3847. I asked Mr. Hunter to appear here for me last week because I was unable to be present. I am president of the National Council of American Shipbuilders; and we feel that this bill has a peculiar relation to the shipbuilding interest that was not intended when it was written. That is by reason of its all-inclusive character. On page 2 of the bill it refers to "public buildings or public works" and "public works" has been determined by the Supreme Court to include ships. In the construction of a building one knows the spot it is going upon and the conditions surrounding its construction. On the other hand, a ship may be constructed in Chicago, Philadelphia, New York, Newport News, New Orleans, or San Francisco.

Mr. WELCH. You might exclude the Pacific coast. Your eastern shipbuilders have seen to it that the Pacific coast is eliminated from any possibility of building ships provided for under the Jones-White Act of 1927.

Mr. SMITH. We can come down to the repair end, then, because the Pacific coast is going to do a lot of that.

Mr. WELCH. The Pacific coast received no benefits under the Jones-White Act of 1927.

Mr. SMITH. For 20 years you on the Pacific coast are going to get repairs on half of the ships built under that act. Half of the companies building those ships have headquarters on the Pacific coast.

Mr. WELCH. We should be given a differential of one-half of 1 per cent on ships built with loans made by the United States Government.

Mr. SMITH. I think that would equalize this. The freight differential is about 2.5 per cent higher and labor rates are higher on the Pacific coast.

Mr. WELCH. Shipbuilding has become a lost art on the Pacific coast because we can not compete with the East.

Mr. RAMSPECK. What is your objection to this bill.

Mr. SMITH. It calls for the Secretary of Labor to put in a call for bids, the rates to be those obtaining in the vicinity where the public works are to be constructed. He does not know where the ship is to be built. It may be built anywhere. Sometimes when one comes to a ship of moderate size, like one for the Coast Guard and the Lighthouse Service, there are as many as 27 bidders, these ships ranging from the West coast to the Mississippi River and the Gulf. It presents a situation that is from that standpoint wholly impracticable in trying to carry out this particular provision, and the conditions for which the bill was written——

Mr. WELCH (interposing). What class of ships are bid on by shipbuilding plants on the Gulf and the Mississippi?

Mr. SMITH. Lighthouse tenders, Army dredges, Army towboats. There are several classes of them and quite a good many are built.

Mr. WELCH. They are light craft?

Mr. SMITH. Yes; light craft. On the Pacific coast George Arms received five revenue cutters that came within that classification.

Mr. RAMSPECK. Let me ask you this question: This bill contemplates, as does the Davis-Bacon law, that the rates of wages paid shall vary in different localities. That is one of the purposes of the legislation, as I understand it.

Mr. SMITH. Yes.

Mr. RAMSPECK. It is to recognize the difference between the rates of pay in different communities; but neither S. 3847 nor the Davis-Bacon Act attempts to establish a specific wage scale for the entire United States. Would it not be practicable for the Secretary of Labor in your case to recognize the differences? Would he not have to do it in writing a specification? For instance, the rate may be different in Boston as compared with Norfolk, and in advertising for bids the Secretary of Labor would say that the wages at Boston would be so much and if the contract should go to Norfolk the wages there would be so much.

Mr. SMITH. Suppose the contract should be let to somebody from Dubuque, Iowa.

Mr. KOPP. That would be a good place for it to go. [Laughter.]

Mr. SMITH. Yes. They are doing a good deal of shipbuilding at Dubuque.

Mr. RAMSPECK. Why could the Secretary of Labor not ascertain the prevailing wages in each community where there are shipbuilding yards and be governed accordingly?

Mr. SMITH. He would have to cover practically the entire industry when he came to boats of a certain kind. This relates to "public works"—a ship for the Government—but he would have to cover the whole, broad United States.

Mr. WELCH. How many of those ships are built?

Mr. SMITH. There are a number of the small boats built. The number is comparatively great. The Bath Iron Works, for instance, built 10 at one time.

Mr. RAMSPECK. For the Government?

Mr. SMITH. Yes; for the Government.

Mr. WELCH. What character of vessel are they?

Mr. SMITH. Lighthouse tenders, revenue cutters, small craft for the revenue service, Army dredges, Army pilot boats, tugboats, and lightships. There are many such craft built for all branches of the Government.

Mr. WELCH. You can count on the fingers on one hand the number of shipbuilding plants in the United States equipped to build a destroyer.

Mr. SMITH. That is true.

Mr. WELCH. You would have to eliminate that class from watertenders.

Mr. SMITH. There are about 7 plants constructing naval vessels, but there are probably 30 or 40 plants constructing them, all included.

Mr. KOPP. I was not here when your attorney was before the committee. You feel that shipbuilding may be included in this bill?

Mr. SMITH. I am afraid it will be. That is our interpretation of its provisions. The term "public works" has been defined by the Supreme Court as including ships. That is the occasion of my being here.

Mr. KOPP. I can hardly concur in that opinion.

Mr. SMITH. But it is a definite decision of the Supreme Court.

Mr. KOPP. The bill says:

> * * * for various grades of mechanics and laborers for work of a similar nature in the District of Columbia or in the city, town, village, or other civil subdivision of any State in which all or the principal part of the particular contract work is located * * *.

Mr. SMITH. Yes.

Mr. KOPP. Then the bill goes on to line 16, page 2, and says "on the site of such work."

Mr. SMITH. That provides for the subcontractors.

Mr. KOPP. It seems to me that this bill distinctly carries the idea that the work for which these bids are taken must have a site. Let us suppose that different shipbuilders were bidding on a ship and one intended to construct the ship at Dubuque, another construct it somewhere else and still another somewhere else. I do not think that this bill contemplates that there shall be different wage rates suggested to different bidders in the advertised specifications.

Mr. SMITH. We hope the bill does not mean that and we doubt very much whether the author of the bill had any such idea in mind. However, the very inclusiveness of it under the words "public works" would make such an interpretation sure. The site is the location of a shipbuilding yard.

Mr. KOPP. The words must be considered in connection with the succeeding language.

Mr. SMITH. A shipyard is an entity within which a ship is constructed with established rates.

Mr. KOPP. If contractors came to the Secretary and asked what the wage rates were he could secure wage rates for any one place or site.

Mr. SMITH. That applies after the contract is let; but he is required to determine that question when the specification is issued; and the wage rates in Norfolk, Dubuque, and Boston are going to be different.

Mr. KOPP. The Secretary could not limit the bids.

Mr. SMITH. No; but we have 40 trades entering into the construction of a ship and the Secretary would have to have the prevailing rate for all of those trades.

Mr. KOPP. The wage rates might vary in different shipbuilding yards, but the Secretary could specify the prevailing wage rates at any one place.

Mr. SMITH. When he lets the contract; yes.

Mr. KOPP. When he writes the specification for the advertisement.

Mr. SMITH. I don't see that. The prevailing rate must be the rate paid in the vicinity of the shipyard.

Mr. KOPP. I can not see how a court can construe this bill to include ships when you have the site of such definitely located.

Mr. SMITH. Ships are constructed upon a definite site. They are constructed on land and then slid into the water.

Mr. KOPP. The place where a ship will be constructed can not be specified in specifications calling for bids from different bidders.

Mr. SMITH. Yes; it is. It is located in a shipyard at one spot until it is ready to be launched, then it goes into the water and may be moved anywhere.

Mr. KOPP. The Secretary would have to give figures according to the place where the work was to be done.

Mr. SMITH. But when he sends out specification he can't do that. He has got to give a dozen different rates.

Mr. WELCH. There is a difference, but how could it be remedied without complicating the situation beyond measure? For instance, let us assume they are advertising for the construction of a post office for Dubuque, Iowa. That post office has to be constructed there. They can not construct it somewhere else and move it to Dubuque. Then suppose they are advertising for the construction of a water craft to be located at Dubuque. It could be constructed at Norfolk, Newport News, or any other place in the United States that is available for the work and then be moved to Dubuque after so constructed.

Mr. SMITH. Yes.

Mr. KOPP. This bill was not written with that idea in mind and it does not include such work, considering the bill in its entirety.

Mr. SMITH. I might mention what has happened in connection with similar bills before this committee. We prepared objections for the House Committee on Labor in connection with H. R. 11200, Seventy-second Congress, first session, and in reporting out that bill the committee definitely specified the kinds of public works to which the bill should apply.

Mr. WELCH. Could we not eliminate the shipbuilding industry from the bill entirely?

Mr. RAMSPECK. Do the members of your organization operate in accordance with agreements with organized labor?

Mr. SMITH. Most of our members operate on the open-shop basis.

Mr. RAMSPECK. And the wage scales vary?

Mr. SMITH. Yes; in the different localities. However, there have been no changes in the wage scales in particular localities for some time.

Mr. RAMSPECK. What is your suggestion to the committee?

Mr. SMITH. There are five House bills under consideration, or were under consideration, including H. R. 12 and H. R. 7500, and they were all similar. A compromise bill was reported out and it was satisfactory. In favorably reporting H. R. 11200 this committee said:

> The purpose of this bill is to apply the provisions of the act entitled "An act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes," approved March 3, 1931, to mechanics and laborers employed upon the construction, alteration, and repair, including painting and decorating, of dams, locks, bridges, or the installation of machinery thereon; flood-control work and dredging, or any other manner of river and harbor construction work within the continental limits of the United States, Territories, or the Canal Zone, performed by or in behalf of the United States, or the District of Columbia, whether under formal written contract or otherwise, where the estimated or contracted for cost of the work is in excess of $500.

That seemed to segregate those things that were in mind.

Mr. WELCH. If you will eliminate the kind of water craft you are basing your argument on, that is the lightest of the light, and go back to the heavy water craft, vessels of 10,000 tons and over. Why exclude them?

Mr. SMITH. It could be done in part; but what is the advantage of it. It accomplishes nothing. The shipbuilder is not looking for protection against a rise in labor costs in normal times. He can take care of that satisfactorily. You are aiming to protect the contractor against a rise in wages and to provide for a reduction in wages. A shipbuilder always assumes that risk in bidding.

Mr. LOVETTE. Why the difference between a shipbuilder and any other builder?

Mr. SMITH. The prime difference lies in the reasons you probably did not hear. The fact is that a shipyard may be in Boston, Newport News, up the Mississippi River, or in San Francisco.

Mr. LOVETTE. So might a post office.

Mr. SMITH. Exactly; but it is built in one place and remains there. A ship may be built in Newport News and delivered for service at San Francisco. That makes a difference. Therefore the Secretary of Labor would have to give the labor rates for every shipyard in the United States.

Mr. WELCH. The entire shipbuilding program that is being financed by the United States Government is confined to an area within 700 miles of where we are sitting.

Mr. SMITH. No; that is incorrect.

Mr. WELCH. Where else are ships being built?

Mr. SMITH. Two years ago there was more tonnage constructed on the Ohio and the Mississippi Rivers than in any other shipyards in the United States.

Mr. WELCH. What kind of ships? The United States Government has advanced more than one-third of a billion dollars for the construction of high-class merchant vessels and all of that work has been done within 700 miles of this room.

Mr. SMITH. I admit that that construction has been done there; but those are not Government ships within the terms of this bill.

Mr. WELCH. They are Government-financed ships.

Mr. SMITH. But they would not come under this bill.

Mr. LOVETTE. I can not see the difference, in this connection, in building a ship and building a post office. The fact that the ship was

delivered elsewhere than where constructed should not make any difference. The Government should make the best possible bargain in that construction.

Mr. WELCH. The Government does not let the contract in connection with constructing these ships for the merchant marine. They are financed with money borrowed by private individuals from the Government at a nominal rate of interest.

Mr. KOPP. S. 3847 provides that—

> The advertised specifications for every contract in excess of $5,000 for construction, alteration, or repair of public buildings or public works in the District of Columbia or in any city, town, village, or other civil subdivision of any State, to which the United States or the District of Columbia is to become a party and which requires or involves the employment of mechanics or laborers shall contain a provision stating the prevailing rate of wages as determined by the Secretary of Labor, for various grades of mechanics and laborers for work of a similar nature in the District of Columbia or in the city, town, village, or other civil subdivision of any State in which all or the principal part of the particular contract work is located * * *.

Mr. SMITH. Yes.

Mr. KOPP. If the bill contains "ships," how would you construe it in connection with the advertising?

Mr. SMITH. I would construe it this way, that when a call for bids was put out it would contain the prevailing rate of wages for the locality in which the ship was to be constructed. It would include the prevailing rate of wages they wish to have for the locality where the ship is to be built.

Mr. KOPP. "Where the particular contract work is to be located." Where is the contract work located if it is to include ships?

Mr. SMITH. At the site where the ship is to be constructed. The invitations to bid must go to all builders that are in the different localities.

Mr. KOPP. You can not read into this bill that there shall be more than the prevailing rates at one place in the advertised specifications. It calls for only one set of specifications and the specifications must contain the price where the contract work is located. The work can not have more than one location.

Mr. SMITH. Where the contract is finally placed?

Mr. KOPP. Before that. On your theory he would not know where it was to be, but before he has a contract the Secretary has to specify what the prevailing rate of wages is to be at the place the contract is to be fulfilled. This does not contemplate the construction of a ship.

Mr. SMITH. I do hope that is true.

Mr. KOPP. According to your theory, all shipyards would have to be included.

Mr. SMITH. Yes.

Mr. KOPP. I do not believe that is contemplated.

Mr. SMITH. Neither do I; but a careful analysis of the bill by our counsel leads us to believe that it does.

Mr. KOPP. It says the prevailing rate of wages at the one place and that place is where the work is located; and that is the only one that would be in the advertisement.

Then it refers to "the site of such work." Well, a ship does not have a site.

Mr. SMITH. Yes it does. That site is where it is building. The site is the building way upon which it is being built before going into the water.

Mr. KOPP. There is a legal definition of "site" and a ship has no "site."

Mr. RAMSPECK. Do you desire to read the brief you spoke about in the beginning of your testimony or do you want to submit it without reading for inclusion in the record?

Mr. SMITH. Mr. Hunter read it to you last week; but I can read it again.

Mr. RAMSPECK. You may submit it for the record, if there is no objection.

Mr. SMITH. It was placed in the record last week. There is one other point that I should like to bring out and that is, if by chance the bill remains as it is, there is one other point in connection with how these rates might be applied. In lines 7 and 8 of S. 3847, page 2, you say:

> * * * For various grades of mechanics and laborers for work of a similar nature * * *.

I think that "in the same industry" should be included, because shipbuilding and general buildings trades have many similar kinds of craftsmen. For instance, there is a riveter, a carpenter, a plumber, a pipe fitter, an electrician, a painter, a decorator; and a shipyard is a kind of industry where the rates are established and they carry on continuously year in and year out, while the building trades are employed intermittently. Building-trades and shipyards rates are altogether different and if you should apply building-trade rates to shipyards, it would be impossible to build.

Mr. RAMSPECK. Would "for work of a similar nature" cover that objection?

Mr. SMITH. There is a question of whether it would, unless the words "in the same industry" were put in. Undoubtedly it is meant to be in the same industry; but if we were subjected to building-trade rates in the shipbuilding industry, it would ruin us.

Mr. LOVETTE. In what way?

Mr. SMITH. Because building-trade rates are so very much higher. Shipbuilding rates are satisfactory to our men and they have been established over many years. It is an industry entirely different in every way from the building trade. After completing the construction of a building, the workmen go somewhere else to work; but ships are constructed in the same place year in and year out, and, as a result, the men engaged in the work are employed continuously. However, shipbuilding fluctuates from time to time.

Mr. RAMSPECK. Are you yourself a shipbuilder?

Mr. SMITH. Yes.

Mr. RAMSPECK. Is your company an open shop or union shop?

Mr. SMITH. At the present time I am president of the national council of American shipbuilders and I am, therefore, dealing with the industry for all shipbuilders; so that I am not operating a shipyard now; but I did operate one. I operated one of the largest shipyards in the United States for 14 years.

Mr. RAMSPECK. Where?

Mr. SMITH. At Quincy, Mass. We built everything from tug boats to battleships.

Mr. RAMSPECK. On an open shop or union basis?

Mr. SMITH. Open shop, with agreements with our men.

Mr. RAMSPECK. I asked Mr. Hunter this same question and I want to ask it of you: Is not your objection to this bill due, in part at least, to the fact that it might raise the rates of pay on ships built for the Government and thus cause dissension among your workmen engaged in work for private concerns?

Mr. SMITH. That is one thing, yes. We think it is objectionable for the first reasons given; and the second reason is that if the bill passes as it is there is a possibility that we will be subjected to building trade rates of pay. We could not have two sets of rates of wages in the same shipyard where there might be a Government ship and a merchant ship under construction. In the construction of merchant ships we are now much handicapped in competition with ships in foreign trade because of the higher costs in this country. The costs are 50 per cent or 60 per cent higher here.

Mr. RAMSPECK. Is that due to wages or material or both?

Mr. SMITH. Wages are about double those in Great Britain; more than double those in Germany and Italy; and material prices will range on an average about 25 per cent higher.

Mr. RAMSPECK. Do you use the same work hours on private construction that you use on Government construction?

Mr. SMITH. Yes; eight hours a day.

Mr. RAMSPECK. Do you desire to make any further statement, Mr. Smith?

Mr. SMITH. No, sir; I have covered the matter.

Mr. RAMSPECK. Are there any further questions by members of the committee? [After a pause.] If not, let us thank the witness for his statement and hear the next witness.

Mr. SMITH. I thank you for the opportunity of appearing before the committee.

STATEMENT OF NOEL SARGENT, MANAGER OF THE INDUSTRIAL RELATIONS DEPARTMENT OF THE NATIONAL ASSOCIATION OF MANUFACTURERS, NEW YORK CITY

Mr. RAMSPECK. Our next witness is Mr. Noel Sargent, of the National Association of Manufacturers, New York City.

Mr. SARGENT. I am an economist for the National Association of Manufacturers, 11 West Forty-second Street, New York City.

We come before this committee with a desire to offer suggestions which we believe to be of a constructive character. We concede the power of the National Government, as an owner, to stipulate the wages to be paid upon work done by it or for it.

We further agree that there is no fundamental objection to governmental stipulation that upon such work the "prevailing rate of wages" should be paid. But we insist that it must be the rate which actually prevails on the majority of private construction and not governmental recognition and sanction of a scale under which a minority of available work is performed.

We oppose further extension of such prevailing wage legislation, moreover, until safeguards are provided in present and proposed legislation against possible administrative abuses.

We respectfully suggest that it should be provided that the decision of the Secretary of Labor as to what is the prevailing wage in a trade in any community should be determined by the wage actually prevailing

there on a majority of the private work being done in the same trade and industry. We oppose the statement made by President Green, of the American Federation of Labor, in his testimony before this committee last January, that the wage scale of the American Federation of Labor should arbitrarily be accepted in each community as the only standard as to what wage is prevailing, since in many communities the union scale is not the actually "prevailing" wage.

We also suggest, as a safeguard against possible future administrative abuse, and as a matter of sound public policy, that an appeal should be provided from the decision of the Secretary of Labor as to what wage is prevailing. You are, of course, aware that in similar cases of legislative action appeals are provided from the decisions of governmental boards and department heads.

Mr. KOPP. Who should do the appealing?

Mr. SARGENT. The one complaining against the wage rate.

Mr. KOPP. The rate is to be in the specifications.

Mr. SARGENT. There are two propositions involved; one is that we have the advanced determination of the wage rates, the other is that after the contract is in force there shall be determination as to what constitutes the prevailing rates of wages. We have in the State of Oklahoma at the present time a case where the owners, the chambers of commerce, and the contractors in the community have agreed to certain rates of wages, but the Secretary of Labor has said that other rates of wages prevail there; therefore we believe that there should be a right of appeal.

Mr. KOPP. The contractor would not be interested in that.

Mr. SARGENT. He would not if the Metcalf bill were enacted into law. He would have little interest in it because he could pass the cost on to the Government anyway.

Mr. RAMSPECK. Your objection is not from the standpoint of or in the interest of the contractor but is from the standpoint or interest of the taxpayer?

Mr. SARGENT. Yes; and the affect of the cost of construction that might be involved.

PREDETERMINATION OF PREVAILING WAGE

The chief ostensible purpose of the Metcalf bill (S. 3847) before you to-day is the provision that contractors may know in advance—at the time of bidding—just what wages they will be called on to pay.

We believe that if the Davis-Bacon Act is to remain on the statute books this provision of the Metcalf bill providing for predetermination of wages rates is highly advisable. Under the Davis-Bacon Act the contractor involved must pay not less than "the prevailing rate of wages," but can never be sure until he is accused of not paying such prevailing wage whether he is violating the law or not. It is true that the statute enacted March 3, 1931, provides no direct penalty for violation of the requirement. Since we can not, however, assume that Congress intended it should not be enforced we are led to believe that it is to be enforced by having the Comptroller General refuse to approve payment of contractors' bills if the Secretary of Labor says the prevailing wage rate was not paid. That certainly makes the bill a penal statute, and in any event we have the Executive order of January 19, 1932, providing that if the law is violated not only may

the contractor be removed but he may have to pay to the Government "any excess cost occasioned the Government thereby."

It is our belief that the Davis-Bacon Act as it now stands, including the Executive order just referred to, is unconstitutional We base our belief on decisions of the United States Supreme Court. In the case of Connally *v.* General Construction Co. (269 U. S. 385; 1926) involving an Oklahoma statute similar in language to the Davis-Bacon Act, but providing a specific penalty for violation, the court held:

> That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties is a well-recognized requirement. * * * A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to the application violates the first essential of due process of law. * * * The words "current rate of wages" do not denote a specific or definite sum.

In the case of Yu Cong Eng *v.* Trinidad (271 U. S. 499) Chief Justice Taft declared for the court:

> To violate the principle that a statute which require the doing of an act so indefinitely described that men must guess at its meaning, violates due process of law.

It was held by the court that a vague requirement is particularly "objectionable in a criminal statute"—and likewise, of course in a penal statute.

Because the term "prevailing rate of wages" as presented in the Davis-Bacon Act is not specific but admits of honestly varying interpretations by different individuals we believe it is so vague, uncertain, and indefinite that the act would be thrown out in the courts if a case involving this point should arise.

Mr. LOVETTE. That is very sound reasoning, but suppose we have a law whereby some definite authority shall fix the rates of wages and the contractor and the Government agree as to that and enter into a contract. Then that process of reasoning would not apply.

Mr. SARGENT. Not if the determination is in advance. But if you provide that the contractor must pay so much and he will be deprived of the contract if he doesn't do that, that is something different.

Mr. LOVETTE. If agreed upon at first, it would be all right?

Mr. SARGENT. Yes.

We believe, however, that if the present act were amended to provide predetermination of wage rates, as the Metcalf bill proposes, sufficient definiteness might be given to render the act, at least in this particular respect, consitutional.

There would still remain the question as to whether the term "prevailing rate of wages" of itself provides enough definiteness, even with a predetermination, to remove all doubt as to constitutionality. Congress may not delegate legislative power, but it may establish a standard whose application depends upon the recognition and determination of specified conditions by the President, a department head, or a commission. The congressional act must, however, supply a definite and certain basis upon which the determination and action are to be based. It is, it would seem, a debatable question whether the term "prevailing rate of wages" in itself supplies to the Secretary of Labor such a definite standard, since one Secretary might adopt one idea as to what constitutes the prevalent wage and

his successor might apply a totally different yardstick. We believe therefore, that the Davis-Bacon Act should be amended to clearly provide that not only shall the "prevailing rate" be predetermined but also to define "prevailing rate," as the wage being paid for the majority of private work in the same trade and industry.

I am inclined to disagree with Mr. Hushing, legislative representative of the American Federation of Labor, who, in his testimony before the Senate Committee on Education and Labor March 17, 1932, declared that predetermination of wage rates is unconstitutional and if the Davis-Bacon Act as it now stands is unconstitutional, as I believe, then this entire field of legislation, so far as it affects private contractors, is beyond the power of Congress to enact. Mr. Hushing opposes this predetermination because it impairs, he alleges, "the right of contract" by fixing wages private employers must pay. We, on the other hand, concede the right of the Government, in its capacity as a municipal corporation to definitely stipulate the wages which must be paid on work done for it, even though we might doubt the wisdom of such legislation or oppose the administration.

EXTENSION TO "PUBLIC WORKS"

The Davis-Bacon Act now in operation is limited to work done on "public buildings." The Metcalf bill would extend the law to also cover "public works." The Connery bill (H. R. 11200), likewise proposes to extend the Davis-Bacon Act beyond the narrower field of "public buildings."

So far as I can ascertain, the fact that the Metcalf bill proposes extension of the "prevailing wage" idea to the entire "public-works" field was not even mentioned when the bill was passed by the Senate, and was not mentioned in the report of the Senate Committee on Education and Labor, and was mentioned only once, and in an incidental manner, during the hearings before the Senate committee.

The term "public works" has been judicially construed (Ellis *v.* United States, 206 U. S. 246, 1907, Holmes, J.) to include dock construction and it was inferentially held that road building is included. Channel dredging, on the other hand, was held not to come under the term. It was broadly held that "public works" must have "some kind of permanent existence and structural unity."

At the hearing last Thursday and also this morning it has been stated that "public works" includes shipbuilding. It would seem impractical to include shipbuilding where wages are to be predetermined, but it seems doubtful whether the bill actually embraces ship construction, a very narrow distinction being involved. The statement must be based on the case of Title Guaranty & Trust Co. *v.* Crane Co. (219 U. S. 24), decided in 1910, in which the Supreme Court in an opinion by Mr. Justice Holmes construed an act of 1894 referring to "the prosecution and completion of any public work" as including the construction of a steamer. But in a case decided three years previously (Ellis *v.* United States, 206 U. S. 246) Mr. Justice Holmes clearly differentiated between "public work and public works," holding that the plural had an altogether different legal meaning than the singular.

We are opposed to extending the prevailing wage legislation to any new field unless, as previously stated, it is made very clear that the prevailing wage is to be considered as that being paid to the largest

number in the particular locality at a particular time, and unless some arrangement is made for a possible appeal from the decision of the Secretary of Labor.

INDEFINITE COST OF PUBLIC CONSTRUCTION

The Metcalf bill provides that if prevailing wages change during a contract (lasting more than three months) the contractor must pay the new rate, and—

> in event the rate of wages is so increased, an amount equal to the amount of such increase in wages in any one month shall be paid at the end of such month to the contractor * * * and in the event of a decrease in the rate of wages, the contract price shall be decreased by the amount of such decrease in wages.

We are opposed to this provision.

We believe it is highly desirable that definiteness should replace indefiniteness in this type of legislation. We therefore agree with the contention of the Associated General Contractors that wages should be predetermined. But we can not agree with their idea that contract prices should be increased during the life of a public building or public works contract.

Such a provision, Mr. Chairman and members of the committee, replaces definiteness by indefiniteness in the cost of public construction.

It is contrary to the prevalent demand for economy in Government expenditures. Let us suppose that Members of Congress appropriate $10,000,000 to build a post office in some city and contracts are let for that amount. Then during the life of the contract wages are increased once, twice, or more times, amounting to $1,000,000. Under this legislation Congress would be morally obligated to pass an emergency appropriation to provide the extra million dollars. Of course, Congress might refuse to appropriate, and the contractors could whistle for their money, since Congress, as instanced in many decisions by the Court of Claims, can not be compelled to appropriate even when the Government admittedly owes sums; but, Mr. Chairman, such a situation would probably seldom arise and Congress would pay the bills.

The point is this: Once Congress decides to spend a sum on any public construction there is no certainty, under the Metcalf bill, that the cost will not exceed the appropriation.

Mr. WELCH. Did you appear before the Senate committee in opposition to this provision?

Mr. SARGENT. No, sir; I did not know the hearing was to be held, and only three or four witnesses appeared in connection with it.

We believe the Government and contractors should take the same chance of wages, materials, and other costs changing during the life of a contract as are taken every day by private owners and contractors.

We concur with the American Federation of Labor (hearings before the Senate Committee on Education and Labor, March 17, 1932) in opposing this provision. We feel that it would restore some of the worst evils of the cost-plus system existing on public contracts during and immediately after the war.

But it may be said that the wording of the Metcalf bill also provides for a "cost-minus" situation, in the event that wages go down during the life of a contract. We believe, however, that the tendency would be for wage increases to far outnumber wage decreases. One reason for this would be that contractors would have no particular reason for opposing demands for uneconomic wage increases so long as they know they can pass an extra cost on to the Government. I did not attend the hearing held by this committee last Thursday, but I understand that the president of the Associated General Contractors declared, in substance, that as long as the wage rate is predetermined contractors do not care what rate is established to be paid on government work—that the Government is spending its own money and has a right to set any figure as to what it wishes labor to be paid.

We object, as I have said, to provisions that render public-construction costs completely indefinite so far as the owner—the Government—is concerned until the construction is completed.

We believe, moreover, that when the Government adopts any building policy it should so operate as to encourage instead of discourage private construction. It is for this reason that we emphatically oppose the idea that public construction costs should be increased either by Government subsidization of wage-increase demands made during the life of public-construction contracts, by acceptance of the idea that it does not make any difference what wages are paid since the Government foots the bill, or by acceptance of an arbitrary standard, the union wage scale, as always being the prevailing wage in a community. We oppose such ideas and practice because when Government pays uneconomic wages it naturally tends to increase private wages to a similar uneconomic level, thus increasing the cost and decreasing the amount of private construction.

REASONABLE COST OF LIVING

Since the Metcalf bill is proposed as an amendment to the Davis-Bacon Act we must also consider here some related aspects of the Connery bill, also proposing to amend the same act. The particular parts of the Connery bill to which I will call your attention have not previously, so far as I can ascertain, been discussed in any of the hearings on the general subject which have been held by this committee.

Mr. WELCH. I do not think that the gentleman to whom the witness refers, Mr. Kaiser, the president of the Associated General Contractors, went as far as the witness has quoted him. I do not think the record will so show.

Mr. SARGENT. I have not seen the record and I may be inaccurate in that statement.

Mr. WELCH. I think your remark is far-fetched; but Mr. Kaiser did say something along that line.

Mr. SARGENT. I am glad to have your observation as to what Mr. Kaiser did say.

Mr. WELCH. I think he said that they would pay whatever scale might be fixed by the Government and do it willingly; but he did not say that it was a matter of indifference as to what the Government pays for its construction work or what figure it placed it at.

Mr. SARGENT. It is a matter of indifference in one way, unless they are doing a large amount of private construction. I presume that

Congress will try to merge the various pending bills dealing with this subject instead of having several separate bills, therefore I will, with your permission, make some brief observations on the Connery bill dealing with this particular subject.

The Connery bill provides that the prevailing rate of wages on public construction or works must be not less than "the reasonable cost of living" in the particular locality where the work is performed. This is an entirely new principle of wage determination, and if enacted into law for a particular class of workers there would doubtless be, as experience teaches, future efforts to extend the principle to all labor contracts which the Government could legally control.

We are specifically opposed to this proposal in the Connery bill for the following reasons:

First. It is indefinite, since it provides two standards of wages which must be considered.

Second. It is indefinite, since it provides, in effect, that the higher of two wage standards shall be paid.

Third. In the event of a dispute as to what sum constituted a "reasonable cost of living" in any locality the Secretary of Labor must decide. He would, it is presumed, have this point determined by the United States Bureau of Labor Statistics. But this would involve much delay, and perhaps addition to construction cost, since it would take considerable time, particularly in a community where the matter had not previously arisen, to determine what constituted a "reasonable cost of living."

Fourth. It would enormously add to the cost of the Bureau of Labor Statistics, and this bill should not be passed by Congress unless there is also provided a substantial additional appropriation for the Department of Labor, which would seem unwise at a time when curtailment of governmental costs is imperative. The cost would be substantial since the Connery bill would require an initial survey of what constituted a "reasonable cost of living" in practically every town or district where public construction was to be performed (in some cases a "reasonable cost" for a small group of towns in an area having a substantially uniform cost could be established). Once a "reasonable cost" has been determined for a locality or area it will be fairly easy after that to compute changes, but even that would require a large staff to constantly visit all sections of the country.

Fifth. The bill provides for a determination of the "cost of living," but it specifies that it must be a "reasonable" cost of living. Now, it is a comparatively easy matter to determine what the actual or average "cost of living" in a locality is—a matter of purely statistical determination. But the word "reasonable" certainly implies that there must be some "standard" applied to the "cost of living"—presumably it must equal an amount necessary to provide what is considered a "reasonable standard of living." That would involve not merely a determination of what the facts are, but a determination of what the facts ought to be—a matter which has always been considered outside the proper province of the United States Bureau of Labor Statistics.

Sixth. The United States Bureau of Labor Statistics has never, we are informed, with one possible exception, ever attempted to determine what is a proper "standard of living"—one which could be used

to determine whether the "cost of living" in a community was "reasonable" or not. Such determination would be difficult, would take a long time, and would be very expensive. Moreover, standards differ from one community to another and from time to time. I doubt if any two high-class social workers selected at random would agree as to what is a desirable "standard of living"—I imagine that there would be wide disagreement on the subject among the members of this committee.

Seventh. This proposal must rest on an assumption that the Bureau of Labor Statistics is now able to determine the cost of living; but, as a matter of fact, the Bureau of Labor Statistics does not have a satisfactory method of determining the cost of living. Beginning in 1927 and every year since the Bureau's director has urged that funds be appropriated to provide for a new survey of the cost of living. The last budgetary survey of the family cost of living was made in 1918. The Director of the Bureau of Labor Statistics has declared that the present figures of the bureau as to living costs in 90 localities lack "the accuracy which is essential to their usefulness" and that they are "very much out of date." It is estimated that such a survey would cost $300,000, and if used on the wide scale proposed in the Connery bill would cost much more.

Eighth. The Connery bill proposal is indefinite since it does not state whether the "reasonable cost of living" which must be paid must be "reasonable" for the individual worker or for the average worker; certainly the "reasonable" needs of a worker differ according to the number of his dependents.

Ninth. In addition to the fact that the entire legislation would be imperiled because of possible unconstitutionality due to lack of any judicial or legislative determination as to what constitutes a "standard of living" and because of indefiniteness upon several grounds of the phrase "reasonable cost of living" in the bill, the use of the word "reasonable" is probably also unconstitutional. No definition or standard as to what is "reasonable" is provided. In the absence of any such defined method of determining what is "reasonable" the legislature has unwarrantably delegated power to the Secretary of Labor. We recall that the Supreme Court upheld the application of the "just compensation" provision of the Federal railway control act, but did so because the act itself had sufficiently defined the manner in which the "just compensation"—the so-called "standard return" should be computed. (Marion & Rye Valley Railway Co. *v.* U. S., 270 U. S. 280, 1926.) No such sufficient method of determining what is "reasonable" is provided in the Connery bill.

We recall, Mr. Chairman, that in 1909 the Judiciary Committee of the United States Senate, which then included such great figures as Mr. Nelson of Minnesota, Mr. Elihu Root and the present Associate Justice Sutherland of the Supreme Court, opposed insertion of the word "unreasonble" before the term "restraint of trade" in the Sherman Act. It was held that, under clear court decisions, such insertion would invalidate the Sherman Act as a criminal statute; the proposal was therefore abandoned. The shortly subsequent use by the Supreme Court of the word "reasonable" in the Standard Oil case was altogether different, being purely descriptive in character, and not applying or defining any precise legislative or judicial standard.

Mr. WELCH. You are presenting arguments against the Connery bill.

Mr. SARGENT. The two will have to be considered in conjunction, because Congress will probably try to merge this legislation. When you held hearings in January none of the bills under consideration had any reference to the matter of a reasonable cost of living in connection with the prevailing rate of wages. That matter was subsequently inserted, and therefore it has not been discussed.

Mr. WELCH. The Connery bill is not before the committee.

Mr. SARGENT. That is true; but the Congress will, as I have said, probably endeavor to merge this legislation rather than have two or three separate bills on the subject. Both the Connery bill and the Metcalf bill provide for an extension of the Davis-Bacon Act to include new classes of construction and for a different method of determining the rate of wages. In all of those respects they deal with the same matter.

Mr. WELCH. You are opposed to this bill in its present form?

Mr. SARGENT. We are heartily in favor of the predetermination of rates of wages; but we oppose the suggestion in this bill that prices may be changed during the life of a contract, because that would make the cost of construction uncertain and indefinite.

Mr. RAMSPECK. With reference to the question of cost of living mentioned in the Connery bill, I think the idea of the committee was that they were including work on rivers and in sparsely settled localities where, if we used the prevailing rate of wages, the only rate of wages in that community would be the rate of wages for farm labor, which, of course, would be below the rate of wages any contractor, no matter how unfair he might be to his labor, would pay for construction work of any kind. It was therefore necessary for the committee to get another basis for the purpose of effecting a reasonable rate of wages.

Mr. SARGENT. I appreciate that viewpoint, Mr. Ramspeck, but it is my belief that you have inserted a standard that is impracticable so far as the work of the Bureau of Labor Statistics is concerned, unless you can get Congress to provide an additional appropriation, and also one that is of itself so vague and uncertain that it would be unconstitutional, and therefore you would probably threaten the constitutionality of the other parts of the act that you consider more important and essential.

LOCALITY

The Connery bill likewise provides that the prevailing rate of wages in each locality must be paid. The use of the word "locality" without further definition is so vague and uncertain as to render the entire bill unenforceable. In the case of the Oklahoma prevailing wage law (Connally *v.* General Construction Co., 269 U. S. 385, 1926) the law provides that the "current rate of wages" in each locality must be paid. The United States Supreme Court declared:

> Additional obscurity is imparted to the statute by the use of the qualifying word "locality." Who can say, with any degree of accuracy, what areas constitute the locality where a given piece of work is being done. * * * In other connections or under other conditions the term "locality" might be definite enough, but not so in a statute imposing criminal penalties. * * * The application of the law depends not upon a word of fixed meaning in itself, or one made definite by statutory or judicial definition, or by the context or other legitimate aid to its construction, but upon the probably varying impressions of juries as to whether given areas are or are not to be included with particular localities. The constitutionality guaranty of due process can not be allowed to rest upon a support so equivocal.

CONCLUSION

We have endeavored, Mr. Chairman and members of the committee, to present in a constructive, and, we hope, helpful manner our observations upon points contained in bills now before this committee, or which may be considered by you in preparing your reports.

Our chief contention is that it is absolutely necessary in this legislation that definiteness replace indefiniteness, and that new proposals adding new uncertainties be rejected. Definiteness is desirable for two chief reasons—to remove grave doubts as to constitutionality, and to provide increased fairness to the Government, contractors, taxpayers, and private industry.

We advocate a provision that the prevailing rate should be the one paid on the majority of private work in the same trade and industry in the district involved, and that provision be made for appeals from the decisions of the Secretary of Labor. We indorse the provision that the prevailing rate of wages be determined in advance and included in specifications.

We oppose the suggestion that contract prices be changed during the life of a contract, since this makes the cost of Government construction indefinite and uncertain.

We regard as impracticable and perhaps unconstitutional the provision that the "prevailing rate of wages" must equal the "reasonable cost of living."

We direct your attention also, in a desire to be helpful, to the fact that, according to court decisions, the words "reasonable" and "locality" are so vague and indefinite that by themselves they have no legal meaning and may threaten the constitutionality of related legislation.

I have concluded my remarks.

Mr. RAMSPECK. Are there any further questions by members of the committee? (After a pause.) Apparently not. We thank you very much for your appearance, Mr. Sargent.

Mr. SARGENT. I am glad to be here.

STATEMENT OF THOMAS A. LANE, SPECIAL DEPUTY OF THE BRICKLAYERS, MASONS, AND PLASTERERS' INTERNATIONAL UNION OF AMERICA, WASHINGTON, D. C.

Mr. RAMSPECK. The next witness is Mr. Lane.

Mr. LANE. Mr. Chairman and gentlemen of the committee, it is the desire of our organization, the Bricklayers, Masons, and Plasterers' International Union of America, to go on record before this committee of Congress as opposing the provisions of the Metcalf bill, especially those provisions which refer to a predetermined wage rate which requires the filing of a complaint by 20 workmen actually employed by the contractor, and the provisions which require that all complaints be filed within 10 days after the workmen have left the employ of the contractor.

We are in favor of the penalty provision of the bill.

Mr. RAMSPECK. If that provision were amended so as to give your union officials the right to make the complaint, I presume you would have no objection.

Mr. LANE. That is not true. We are opposed to the bill, but if it is to pass it should be amended in this respect.

Mr. WELCH. What section is that?

Mr. LANE. Down in the body of the bill.

Mr. RAMSPECK. Section 3, page 5, line 20, S. 3847, provides that complaint shall be made by not less than 20 laborers or mechanics employed on the work. I think that should be amended so that representatives of organized labor or anybody else having a public interest might raise the question.

Mr. LANE. It would be impossible to get 20 employees of a contractor engaged on the work to make complaint at any time, because, just as soon as the petition of complaint were started, as a practical proposition, the contractor would probably discharge those men and they would no longer be employees.

As I have said, we are in favor of the penalty provision of the bill.

We are opposed, on general principles to the Government fixing wage rates in the masonry trades where there are no disputes and where an agreement and provisions for arbitration exist. As we have watched the operation of the present act, it has been our observation that in 95 per cent of cases there have been no disputes. I overheard the statement in the conciliation service of the Department of Labor the other day that that service had handled about 400 cases and that the Secretary of Labor had been required to make only 25 or 30 actual decisions. The other cases were settled through agreements; and therefore we feel that a continuation of that policy should be followed.

We are opposed to this bill because it is unworkable and is contrary to the principle of collective bargaining and the fulfilling of agreements. Furthermore, we are opposed to this bill because of the source from which it comes, a source which we feel is openly hostile to the prevailing wage idea.

We find the group which is advocating the bill and which appeared before the Senate committee making wild claims, which are wholly unfounded, against the prevailing-wage decisions which have been made by the United States Department of Labor. In support of this, we have statements which appear in the bulletins of the Associated General Contractors' State organizations, especially in Texas and in the Carolinas, and which are referred to in the Senate hearings.

The information contained in the State circulars of the Associated General contractors is of similar character and we therefore assume the information was compiled and sent out by the Washington office of the Associated General Contractors, although Mr. Hard denies that his organization in Washington sent it out.

Particular stress has been laid in the Senate record and in the above-mentioned circulars on a prevailing-wage decision made by the War Department and the Secretary of Labor on the wages of masonry mechanics engaged in the construction of barracks and hangars at Langley Field, Va.

Our organizations, as members of this committee know, have not agreed with the Secretary of Labor on all points concerning wage legislation. However, we feel that the attack of the various branches of the Associated General Contractors on the decision of the Secretary of Labor is unfair because it it not based upon fact.

I am now speaking from personal knowledge, especially concerning Langley Field, and I am speaking also from personal knowledge of the Washington end of the Shreveport situations and the situation at Fort Benning, Ga., which has already been brought to the attention of both the Senate and the House committees by the Associated General Contractors.

The Associated General Contractors fail to say, in attacking the decision of the War and the Labor Departments at Langley Field, that the decision was based upon wage data furnished by every general contractor in the Hampton Roads area, including the members of the Builders' Exchange at Norfolk. The contractors' representatives also failed to say that the M. H. Sobel Co., the Davis Co., and other contractors were paying the same wage rates at Langley Field as set by the Secretary of Labor and the War Department on contracts which did not come within the provisions of the prevailing-wage law. They also failed to state that the masonry mechanics who worked for a cheaper rate on the work of the J. A. Jones Co., which company is a member of the Associated General Contractors of America, were all nonresidents of the State of Virginia and that the labor conditions on the J. A. Jones Co. job were protested to the War and the Labor Departments by the Governor of Virginia, by members of the Virginia congressional delegation, by the State commissioner of labor, and others.

Mr. LOVETTE. At some time in your discourse I wish you would tell us just what evils or wrongs or disadvantages would necessarily flow from a predetermination of wages. What is the trouble about it? What is the objection to it?

Mr. LANE. We are opposed to the Government going in and fixing wages where it is not necessary to do so. In 95 per cent of the Government building contracts there are no difficulties whatever. If we could take one contracting firm, the Algernon-Blair Co., and make it pay the prevailing rate of wages, the difficulty as it affects rates of wages on Government building contracts would be settled. That is a fact.

Mr. LOVETTE. But that does not answer my question. You are in favor of the Government fixing the prevailing rate of wages if there is any dispute about it—you are in favor of having it settled?

Mr. ELLZEY. You are in favor of the Government's acting as a court of arbitration?

Mr. LANE. Yes.

Mr. LOVETTE. What is the disadvantage, if any, in having that fixed so that there will be no dispute; the Government just requiring the laborers and mechanics and the contractors to fix the rate of wages if they can, but having it fixed beforehand?

Mr. LANE. We do not believe that a predetermined wage rate is workable. If it is passed we will have to get an additional appropriation and a separate agency to gather statistics in advance; and, furthermore, it is the nonunion, open-shop contractor who wants a predetermined rate of wages. Contractors employing our men know what the rates of wages are. We arbitrate those rates with contractors. We feel that this principle does away with the principle of arbitration and collective bargaining and only the open-shop contractor is really concerned. With the latter only is there disputes. We do not have disputes with contractors who are in agreement with us.

Mr. RAMSPECK. I think that the question apparently in Mr. Lovette's mind has bothered other members of the committee who are also in sympathy with organized labor; that is, they have been unable to understand why, if organized-labor officials favor determination after the contract is let, they oppose it before the contract is let.

Mr. LOVETTE. Perhaps the witness has not yet got my question. If the process is wrong it does some injury or causes a handicap to somebody. Let us suppose, for illustration, that there is an existing contract and there is a dispute about the rate of wages. That is what all of this is about. Let us say you do not determine beforehand the prevailing rate of wages, and the matters goes along and you have to have an arbitrator settle it. What would be the disadvantage of taking time by the forelock and whom would it hurt to determine those rates of wages beforehand? That is what I want to know, if there is any reason for it.

Mr. LANE. Theoretically one could not object to it, but as I have seen this impractical operation, under the present Davis-Bacon law, we have had the Veterans' Bureau and the Treasury Department, especially, have their contract officers notify the contractors before the dispute arose as to what the rate of wages was. We are afraid it is going to work out so that the contract officers in the various department will set the rate of wages rather than the Secretary of Labor. That is the thing organized labor is afraid of.

Mr. RAMSPECK. Is it true that some local labor men and labor officials favor a predetermination of the rate of wages?

Mr. LANE. Yes; there is a difference of opinion about the matter; and to be frank with you when I see some of the associations who have come here and opposed the provision of predetermination, well, I am almost inclined to be in favor of it.

Mr. WELCH. In letting the contracts for the Golden Gate Bridge, a project that will cost about $30,000,000, at the request of Mr. Frank McDonald, president of the Building Trades of the State of California, the rate of wages was not only predetermined but the schedule of wages in every part of the work, every unit, was written into the specifications, and that was the wage scale fixed by organized labor and by another body there who was in agreement with that policy. I am very familiar with that case because I am a member of the board of directors of the Golden Gate district. Therefore, every contractor who bid on the work knew exactly what he was bidding on. He knew exactly the amount he would have to pay for labor whether it be skilled or unskilled and he knew what he would have to pay for any material going into the job. That was done at the insistence or the request of organized labor of the State of California.

Mr. RAMSPECK. I want to ask you one other question. In the Executive order of January 19, 1932, there is a paragraph reading:

> It is expressly understood and agreed that for the purpose of said act every person, while performing work of a laborer or mechanic on the public work covered by this contract, is to be regarded as employed as a laborer or mechanic by the contractor or subcontractor, regardless of any contractual relationship alleged to exist between the contractor or subcontractor and such laborer or mechanic.

Do you construe that to abrogate a contract your organization, for instance, might have with a contractor?

Mr. LANE. Absolutely not. That is to prevent what happened at Shreveport after the Secretary made his decision. The contractor let the concrete work out to groups of workmen for $25 a group, and we could not get the rate of wages set by the Secretary of Labor because of these lump-sum contracts for labor. The lump-sum contract was a subterfuge to get around the law, and that is why the President put that provision in the Executive order.

Mr. RAMPSECK. So far as I personally am concerned I would be opposed to any Executive order or any law that would abrogate a contract made by and between organized labor and a contractor. I do not think there should be anything in this that would enable a contractor or a union to break a contract.

Mr. LANE. Those contracts referred to by the President are really yellow-dog contracts.

Mr. RAMSPECK. Referring to this Executive order, there has been some testimony before the committee to the effect that the order has had a tendency to stop contractors bidding on Government work. Have you any information on that point?

Mr. LANE. I have a list, several pages long, of contractors now bidding on Government work. We keep an account of all contractors bidding on that work. Therefore, I would say that the number of contractors bidding on Government work has increased very appreciably. I am sure that the records of the Treasury Department, the Veterans' Bureau, and the War Department will bear me out in that statement. We have complete records of contractors bidding on the different Government projects throughout the country and will furnish them to the committee if desired.

Mr. LOVETTE. I am, of course, sympathetic with labor, because I think labor suffers many disadvantages in competition with organized capital; but I want everything to be fair and just among all concerned. Before beginning a contract labor has to know what the rates of wages is to be?

Mr. LANE. Yes, sir.

Mr. LOVETTE. You will not begin the job until that is settled.

Mr. LANE. No.

Mr. LOVETTE. And the contractor must know what he is going to pay his labor?

Mr. LANE. Yes.

Mr. LOVETTE. The contractor considers what he will pay and the workmen know what they will work for. They are finally in agreement; their minds meet on that. Now what is the objection to writing that into a contract when the workmen and contractor have agreed upon a rate of wages to be paid?

Mr. LANE. I have tried to answer that the best I can. I feel that a majority of the members of the committee—we know that all members are sympathetic toward us—are in favor of a predetermined rate; and it is rather hard to answer your question. There is some difference of opinion about this point among labor representatives themselves as to whether there should be a predetermined rate of wages; but, as I have said, our position is that we are opposed to it because of reasons already given.

Mr. RAMSPECK. I understand that the chairman had an understanding with somebody that we would have a hearing on this subject next Monday to hear the opposition of organized labor. If you would pre-

fer to come back at that time and finish your statement, we should be glad to have you do so.

Mr. LANE. The contractors also charge that we put in a reorganized subordinate union in the Hampton Roads, Va., area. The fact is our organizations at Norfolk and Newport News have been in continuous existence for nearly fifty years and our organization at Norfolk had and still has an agreement with the local contractors on wage rates and no member of our organization in the Hampton Roads area accepted employment under the conditions outlined in the bulletins of the Associated General Contractors.

Furthermore, it is charged by the Associated General Contractors in their bulletins that the wage rates set at Langley Field as the prevailing wage rates were based upon wage rates paid in Washington, D. C. This statement is unqualifiedly false.

We also note that in the hearings held before the Senate committee reference is made to wage reductions at Shreveport, La., which were placed in effect by members of their association. The complaint, however, fails to say that the work was estimated on the higher wage rate and that the contractors, by the subterfuge of subletting work on a labor-only basis, never did carry out the decision of the Secretary of Labor. Therefore, we feel that they have no just complaint and that an attempt is being made to mislead members of the committee.

In connection with the Barksdale Field, La., complaint of the general contractors, will say that the contractors making the complaint not only failed to pay the prevailing wages as set by Secretary Doak, but they imported men from Texas and other States and they refused to employ local men who had been formerly employed by them for years. Also, they flatly turned down an offer of arbitration made by the masonry mechanics of Shreveport.

It is also noted that the local contractors' association in some manner divided the work at Barksdale Field among themselves and at the same time refused employment to local masonry mechanics at Shreveport and vicinity where conditions were bordering on starvation. Only within the past few weeks our organization was compelled to send money to Shreveport for relief. In other words, the contractors at Shreveport all have received Government contracts from which we presume they made some profit at Barksdale Field, while masonry and other mechanics at Shreveport at the present time are starving. I have here receipts for relief money which it was necessary to pay out within the past few weeks.

When we find representatives of such groups submitting legislation before this committee or any committee, I believe it should be very carefully scrutinized.

Another practice that was engaged in by contractors at Shreveport and which they neglected to inform the Senate committee about was that they reduced the wages of mechanics on jobs which did not come under the prevailing-wage law.

In connection with the Fort Benning, Ga., complaint of the Murphy-Pound Co., the representatives of the contractors failed to inform the Senate committee and this committee that Rogers & Leventhal, contractors, of Chattanooga, Tenn., were paying the rate as set by the War Department and the Secretary of Labor.

We cite these cases to enable you to have the true facts in the record.

Also, we desire to submit copy of a complaint against the Algernon-Blair Co., which is now on file in the office of the Supervising Architect of the Treasury Department. The Algernon-Blair Co., as this committee knows, is the same company that built the veterans' hospitals at Northport, Long Island; Columbus, Ohio; and Memphis, Tenn., and it is at the present time engaged in the construction of post offices at Shreveport, La.; Montgomery, Ala.; Aberdeen, Miss.; Atlanta, Tex.; Key West, Fla.; Morgan City, La.; Okmulgee, Okla.; Pikesville, Ky.; Texas City, Tex.; and West Point, Va. Why does the Blair Co. win so many contracts? Is it because it violates Government specifications and fails to pay prevailing rate of wages? We say that these are the reasons.

The committee might as well know that the group which is advocating this legislation has circularized the country concerning reported statements made by the chairman of this committee. It seems to us that it was very ungentlemanly to say the least for any person to discuss pending legislation with the chairman of the committee in a private conference and then circularize the remarks made in that conference throughout the entire country. However, I feel that the chairman of the committee has nothing to be ashamed of in the remarks as reported, and it will only strengthen his position with the laboring people of this country.

I will now conclude by reading into the record the letter of complaint to which I referred a little while ago. It says, to the Acting Supervising Architect of the Treasury Department:

MOBILE, ALA., *April 25, 1932.*

Mr. JAS. A. WETMORE,
Washington, D. C.

DEAR SIR: I wish to call your attention to the workmanship, or rather lack of workmanship, that is being done on the Marine Hospital, this city, by Blair Construction Co., Montgomery, Ala.

I especially want to call your attention to the brickwork. I find upon casual examination various deviations from the specifications. I find the work is not being shoved, nor is it being slushed, only on rare occasions, such as scaffold high or where the wall is left down. I noticed three bricklayers for an hour working on corners, which they took down twice before they finally got the corner up, and not once did I see them attempt to shove their work or even go back over the course that had been laid and fill the back end of their cross joints, or vertical joints. I noticed one of the men take up two courses off a wall on the corner that had been up sometime. He relaid the brick he took up without dampening the wall, and in relaying the brick taken up there was a 1½ of 2 inch space between the brick that he laid and those that had not been taken up. This void he partly filled with mortar by passing his trowel over the face of the wall, thereby filling the face and leaving the back of the hole open.

I found in another place where the bed joint one-half the length of the brick had been left out. I inserted my rule 4½ inches in the wall. As the brick measures 3¾ inches showed the wall had not been slushed at this joint. I also noticed that very little effort, if any, is being made to keep the bed, or horizontal joints, of an even size. Some places the joints are as much as one inch in width, and all over the walls you can see voids which show that the work is not being pointed up as it should.

These things I noticed upon a casual observation. What one would find upon a thorough tour of inspection I would not like to say. The kind of brickwork going into this job is similar to that of Chicago flat buildings or other structures built for speculative purposes. It is quite apparent that the engineer on the job does not know his business, or is extremely negligent in his duties, or why does he permit such work to be done on a Government hospital.

The writer pointed out to Mr. Spinks, the engineer in charge, the flagrant violations of the specifications. He attempted to explain that in order to reach the desired height it was necessary to change the size of the joints. Any one with a thorough knowledge of brickwork knows that your height should be determined at the starting of the corners of the wall and the joints regulated so that the wall will come to a level at a given height at all points with an equal number of courses with the joints of equal size. Of course to accomplish this requires the services of skilled mechanics, and naturally on jobs where men of questionable skill is employed, greater care should be exercised in choosing those to supervise the work, in order that the knowledge of one offsets the awkwardness of the other, so that the structures be erected without lessening the strength or marring its beauty.

I might add that the brickwork has been subcontracted to a man named Carimiller.

The writer believes that if a construction engineer was sent to Mobile to examine this job he would find conditions just as I have stated and recommend that some of the walls be taken down.

In conclusion, I want to state that this letter is not meant as a personal attack on anyone. The writer feels that as a citizen and a taxpayer, in justice to other citizens and taxpayers, it is his duty to notify the proper authorities where, in his opinion, an injustice is being done, and the taxpayer's money being spent unwisely and an attempt being made to degrade an honorable profession, of which the writer has the honor of being a member.

Yours very truly,

J. C. FURR,
Recording Secretray Bricklayers Union No. 2, of Alabama.

STATEMENT OF H. J. DRAKE

The CHAIRMAN (Mr. Connery presiding). Let us hear Mr. H. J. Drake next.

Mr. DRAKE. Mr. Chairman and gentlemen of the committee, what I have to say will take a minute or two only. Last week I appeared here in favor of this bill on behalf of the casualty and surety executives, and I was asked by one gentleman of the committee whether the surety companies had raised their rates as a result of this bill. I then stated that I was not able to answer the question. Upon my return to New York City I took this question up with the Towner Rating Bureau, which bureau has for years given the statistics and established the rates for the fidelity and surety companies throughout the country and it gave me this [indicating] circular bearing date of March 17, 1932, addressed to all its subscribers calling attention to the Davis-Bacon prevailing rate of wage law in connection with the Federal building program. The circular calls attention to the seriousness of this law as it affects surety companies; and I ask that the circular be made a part of the record.

Mr. LOVETTE. Does it show that the rates have been raised?

Mr. DRAKE. They have not been raised but they are giving that matter attention and asking for information as to how it will affect the business of the subscribers. It is stated that if conditions continue as appears now it undoubtedly will result in some increase in rates. I do not think that I need read this circular, even though it is short; but it speaks of the seriousness of this law and says that the matter deserves the very careful attention of the surety companies.

Reference is made in this circular to one of the cases that came to their attention and which was, I think, referred to in the testimony given before the Senate committee. In that case, after the contract was entered into, the rate of wages for laborers, carpenters, and bricklayers was increased considerably. They refer to that particular

case. They refer to that case, and, near the end of the circular, they make this statement:

A strict enforcement of the Bacon-Davis prevailing wage law, without the Government predetermining what is to be considered as the prevailing rate of wage in any locality, increases the difficulties of contractors bidding on Government work and augments the hazards assumed by surety companies bonding such contracts. No contractor under these conditions can possibly determine with any degree of accuracy when making up his proposal what the actual cost of labor will amount to on a given project, and the surety bonding such contracts assumes a real liability which heretofore has been absent in connection with bonds covering Government projects.

For that reason they are anxious to obtain all the information possible with a view to determining whether an increase of rates is necessary. This is all I need to say in addition to what I have said before.

I notice the statement that there are more bidders on Government construction at present. I imagine that the reason for that is the fact that such is about all the construction work that is going on.

The surety companies are tightening up very much on their issuance of contract bonds. They are looking to the amount of the bid very carefully before issuing a bond, to see whether there is going to be a substantial increase in the labor price and whether the contractor will be able to complete or will default, throwing the matter of completing the contract upon the shoulders of the surety company. It is recognized now, when bidding is very close, that a contractor can not stand a large increase in cost without defaulting.

The CHAIRMAN. What do you think about the matter of rebates? That is one thing the President went after in his Executive order. Suppose the committee should see fit to pass this or a similar bill; suppose a job went along all right with reference to the payment of the prevailing rate of wages and the matter of predetermining wages, but that a subcontractor paid a man, say $11 a day and the man refunded $2 every day? Do you think that something should go into the law to prevent the contractor from exploiting a man like that?

Mr. DRAKE. Is there not something in the bill along that line?

The CHAIRMAN. I did not observe anything concerning rebates.

Mr. DRAKE. There is a penalty in the draft of the bill I saw relating to that very thing.

The CHAIRMAN. I find it. It says:

or who, after making proper payment, requires a laborer or mechanic to refund any part of the wages so paid, shall forfeit to the United States the sum of $10 per day per laborer or mechanic for every day any laborers or mechancis are paid less than such prevailing rate of wages, and for each such refund required from any mechanic or laborer, shall forfeit to the United States a sum not less than five times the value thereof.

Mr. DRAKE. I can't see where labor gets an unfair break in this bill. So far as we are concerned, we want labor to get that to which it is justly entitled. However, as Mr. Sargent said, the rates should not be changed during the life of a contract. If economic conditions change for the better wages will go up regardless of the Department of Labor.

The CHAIRMAN. A workman will not remain on his job if wages in his line on an adajcent job are increased.

Mr. DRAKE. No; he will not. In war time when wages went up, economic conditions raised wages, and conditions will improve again, as in the past, during the course of contracts and in that event the

Department of Labor will have to increase the rates. A contractor who enters into a contract at a certain price and finds that he has to complete with increased labor rates will simply be forced out of business if he has to complete at that time.

FEDERAL BUILDING PROGRAM

NEW YORK, *March 17, 1932.*

To all subscribers:

Attention has already been called to President Hoover's Executive order of January 19, 1932, directing strict enforcement of the prevailing rate of wages law applying to all construction contracts of the present Federal building program. This is so serious and deserves such careful attention by contract bond underwriters that we are now distributing to our subscribers information we have obtained as to the workings of this law in a single instance as an example of what may be expected elsewhere.

The ——— Construction Co. recently secured a contract for the construction of a post office at Hobart, Okla., the amount of the contract being $67,490. At the time this contracting company made up its bid for the Hobart project it was also constructing a post office at Frederick, Okla., a short distance from Hobart, and based its proposal on the rate of wage in effect at Frederick. In order to meet the wishes of the Hobart Chamber of Commerce and the town officials, the contractor agreed to use local labor wherever possible, and at a conference with the mayor, the secretary of the Hobart Chamber of Commerce, and representatives of the building trades and labor to be employed in the erection of this building it was determined that the following rates of wages should be considered as prevailing in that locality: Common labor, 25 cents per hour; carpenters, 50 cents per hour; bricklayers, 75 cents per hour.

The wage scale adopted was higher than the scale used by the ——— Construction Co. in computing its proposal, and higher than the scale of wage being paid in the neighboring town of Frederick; nevertheless, the contractor decided to pay this scale on the Hobart post office project.

A short time after the establishment of this rate of wage the ——— Construction Co. was visited by a representative of the Oklahoma City bricklayers' union, Oklahoma City being some 150 miles distant from Hobart, who requested that union bricklayers from that city be used in connection with this project. In view, however, of the agreement to use local labor on this project as far as possible, the contractor did not feel called upon to discharge the local bricklayers and import others from Oklahoma City, consequently declined to employ them. The district engineer of the Treasury Department having supervision over the territory in which Hobart is located, as well as the Government construction engineer on this project and representatives of the contractor, sometime later inspected the work being performed at Hobart and the investigators for the Government at that time expressed themselves as being satisfied that the ——— Construction Co. was complying with the prevailing wage law. Notwithstanding, however, the apparent approval by these Government representatives of the rate of wage being paid by the ——— Construction Co. on the Hobart post office project, the contractor was notified by letter from the Assistant Secretary of the Treasury that the prevailing rate of wage in the locality of Hobart had been established by the Government as follows: Bricklayers, $1.25 per hour; carpenters, 75 cents per hour; common labor, 30 cents per hour.

Furthermore, this letter advised the ——— Construction Co. that it had failed to comply with the provision contained in its contract to pay the prevailing rate of wage and this constituted a breach of its contract; also requested that advices be furnished the department immediately as to what steps had been taken to comply with the terms of its contract and this particular law.

If the Government insists that the rate of wage which it has promulgated as the prevailing rate of wage in the locality of Hobart be paid by the contractor, which is far in excess of what has heretofore been paid in that city, a substantial loss will be incurred. On the other hand, if the contractor refuses to pay the rate established by the Treasury Department, the Government will no doubt exercise its right and take over the contract holding the contractor and the surety liable for any costs in completing the project, which undoubtedly will be in excess of the contract amount. Either way you look at it the contractor apparently is in for a loss, and possibly the surety.

A strict enforcement of the Davis-Bacon prevailing wage law, without the Government predetermining what is to be considered as the prevailing rate of wage in any locality, increases the difficulties of contractors bidding on Government work and augments the hazards assumed by surety companies bonding such contracts. No contractor under these conditions can possibly determine with any degree of accuracy when making up his proposal what the actual cost of labor will amount to on a given project, and the surety bonding such contracts assumes a real liability which heretofore has been absent in connection with bonds covering Government projects.

TOWNER RATING BUREAU.

The CHAIRMAN. Are there any further questions? (After a pause.) Apparently not. If the gentleman has nothing further to tell us, let us hear the next witness.

STATEMENT OF HON. WILLIAM L. NELSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Mr. NELSON. Mr. Chairman and gentlemen of the committee, I represent the eighth Missouri district, through which flows the Missouri River on which much work in connection-channel development has been done during the last few years. Not all of the work between St. Louis and Kansas City has been completed, considerable of it still being under way.

Last summer complaint was made to me as to labor conditions in connection with this river work. From time to time constituents came to me to express their dissatisfaction. I was at first under the impression that legislation which Congress had enacted covered this river work. With this thought in mind, I took the matter up with Government engineers and also with the Secretary of War. In response to telegrams, the latter official advised me that wage scale legislation did not cover river work.

More recently my attention has been called to conditions complained of by men employed by contractors, or subcontractors, on the Missouri. The Columbia (Mo.) Daily Tribune heads an article:

GOVERNMENT INCONGRUITY REACHES COLUMBIA—NEGRO MEN WHO WORKED ON RIVER IMPROVEMENT PAID STARVATION WAGES QUIT THEIR WORK

ONE WORKED FOUR DAYS AND HAD $1.90 COMING TO HIM HE SAYS

While the Government is cutting salaries on one hand and spending with a profligate hand on the other in the maintenance of bureaus, commissions, and useless boards, some of its contractors are paying men starvation wages, one example of which has come to the attention of the Daily Tribune in river work. On April 1, about a dozen negro men from Columbia were lured to Gasconade, Mo., by the agent of a river improvement contracting company. These men went to the job and after working four days more than half of them returned to Columbia because they could not make wages enough to take care of themselves, to say nothing of their families. Vernett Campbell was one of the men. He told the Tribune that he worked four days and that he received 35 cents for each truck of rock he loaded onto the trucks of the Federal Government contractor. But loading a truck on river work is not simply loading a truck. These men had to get the rock out, and clear away the dirt and rubbish. By the hardest sort of work four truck loads a day was the maximum. At 35 cents per load this made his day's work total $1.40. The men are charged 45 cents per day for their board, which is furnished by the company and is of a poor quality. This left the laborer 95 cents a day for his work, if he loaded four loads of rock, or $5.70 per week, to take care of his family and pay his small personal expenses. It can readily be seen that this is a starvation wage.

Luther Dade was another Columbia man who went to Gasconade and returned because he could not subsist on the small wage he was paid. His experience was

like that of Campbell. Dade and Campbell both stated that the company pays on the 10th and 25th of the month and that when they notified the contractor, they were told they would have to wait for the pay due them for four hard days of work. They were told that the money would be sent to them.

The Tribune further states that, according to the laborers referred to, the wage schedule was as follows:

For loading truck, 35 cents per load, with no pay for moving dirt and rubbish, which requires most of the labor in making up a load; 15 cents per truck for loading two and one-fourth yards of stone and again moving the dirt and straw for nothing. Laborers are paid 30 cents an hour. They are supposed to work eight hours per day. There are two shifts. One shift work from 5 to 12 a. m. and goes back and works from 4 p. m. to 5.30 p. m., according to Dade.

Commenting further, the Tribune says:

When a man goes to work for this company the first two weeks' pay is held back by the company, and thus it is a month before he receives any money at all. Vernett Campbell says that he worked four days, and after paying what he owed the company, he had $1.90 coming to him for the four days.

I might add that I have been furnished with statements under oath from some of the parties referred to. Luther Dade, in his affidavit states that he worked for a period of four days. He says:

My work consisted of loading stone on 2-ton trucks for which I received, or am to receive, when paid, 35 cents per load. In loading these trucks it was necessary to move small rock, straw, and dirt for which I received no pay, as this work was incidental to the loading and I was paid only for the number of trucks I loaded with no remuneration for the incidental work which, as a matter of fact, required more time than the actual loading of the trucks. I turned in my time and they told me at the office that my money less deduction for 15 meals at the rate of 55 cents per day and 15 cents which I owed the commissary for tobacco. The total charge against me was $2.90. Robert Key worked with me. We loaded 24 loads or 12 loads each in the partnership division.

I am married. I quit the river work because I could not make living wages.

De Lacy Sapp makes affidavit that he worked for a period of eight days and was paid at the rate of 25 cents per hour; that his work consisted of wiring boards together on the mat which lies on the surface of the water. He declares that the company for which he worked makes a charge of 90 cents a day for meals for men employed on this project. He says:

I left this work because I could not make a living. I received $4.55, which represented the amount, less deductions for board, for the eight days I worked for this company.

Raymond Doyle, referring to his work near Gasconade, makes oath to the following statements:

I was assigned to loading trucks with stone for which I received 35 cents per load. My working partner was William Pannell, also of Columbia. We went to work on March 31, and worked until April 14. I got my money, $7, in cash for 14 day's work. I had 42 meals charged against my pay check at the rate of 55 cents per day. I also had 15 cents charged against me at the commissary. As best I can estimate I loaded about 40 truck loads during the 14 days. I did not keep an account of the number of loads but give this as a fair estimate. The maximum for any one day was eight loads for the two of us or four loads each on the partnership division.

Vernett Campbell, another colored worker, who states that he was induced by a free employment agency to go to work for a contractor on Federal Government river improvement project near Gasconade, says in his affidavit:

It was represented to the employment agency and the individual men that their board would cost them 40 cents per day.

We arrived at the project about noon on March 31, 1932, and I worked four hours that afternoon. I worked the 8-hour shift April 1, 2, and 3 and five hours on April 4.

This company paid me 35 cents per 2-yard truck for loading stone. Most of the Columbia men on the project were assigned to truck loading and worked in pairs. Due to the fact that it was necessary for us to remove and clear away spalds, straw, and other rubbish, for which we received no pay, we were able to load only four truck loads per individual per day, eight loads being the maximum for the pair, which, at the rate of 35 cents per load gave us a wage of $1.40 per day; but, after four days working and realizing that we could not make a living we quit and went to the office for our money. Here we learned that instead of 40 cents per day, as was represented to us by the agent of this company, the company had charged our board at 55 cent per day. Also, we were told that no checks were available with which to pay us at that time and that the company would send the small amount due us on its next pay day, April 10. We have not yet received what was due us from that work.

My brother, Glenn Campbell, and myself, are expert quarrymen, having worked for several years in the rock quarries near Columbia, Mo. In normal times our wages were $18 per week at the Fellows quarry and the Spencer quarry in Columbia, Mo.

At the time I quit this work I had, or should have had, 10 loads to my credit for the four days' work. At 35 cents per load I should have $3.50 for the four days' work. I did not keep account of my meals but since I did not miss any meals while I was working for the company, in the four days I worked I would have eaten 12 meals, which, at the rate of 55 cents per day, would make me $2.20 in debt to the company for meals. This amount deducted from the $3.50 due me for 10 truck loadings would make my net earnings for four days total $1.30. Of course I quit the work because I could not make a living wage.

I feel that this matter is of sufficient importance to be called to the attention of your committee, which now has under consideration measures having to do with the labor program. As to who shall fix wages and what these wages are to be is a matter of interest to the public, the contractors, and the men who work on the projects. Wages fixed should be fair to all, and any legislation should reach subcontractors as well as contractors, and should apply to Government work as well as to work let to private contractors.

In this connection, I wish to express my appreciation of the opportunity which the committee has afforded me to be heard.

I might say, Mr. Chairman, that the affidavits referred to show that the wages are so low that these men were unable to remain on the job.

The CHAIRMAN. I wish you would put all of the affidavits in the record.

Mr. NELSON. I shall be glad to do so. I am not sufficiently advised in connection with this bill to say whether it will reach the subcontractors involved. Will it reach the subcontractors?

The CHAIRMAN. Yes; it mentions subcontractors.

Mr. NELSON. So it mentions and covers subcontractors. I am glad of that. I have no desire to take further time of the committee, but I do want to say that I feel that this is dependable information that the committee should have. And I may at this time emphasize that my great interest is with the men who work. These men happen to be negroes, and I know many of them personally. Some of them have worked in the rock quarries in my own home town. They are experienced, good workmen.

The CHAIRMAN. This bill does not take care of a proposition where the Government itself is doing the work. You will, perhaps, recall that in considering the Davis-Bacon bill I tried to get it changed in connection with the engineers.

Mr. NELSON. Yes.

The CHAIRMAN. I had a letter from the State of Louisiana about two weeks ago in which it was stated that the contractor there had been paying 20 cents an hour on flood-control work and the Government took the work away from the contractor and paid 12½ cents an hour. I have a bill which the committee has already reported on affecting rivers and harbors, dams, and locks, providing that when the Government itself is doing the work it shall pay the prevailing rate of wages. Would you favor that?

Mr. NELSON. Complaint has come to me about these conditions where the Government itself is doing the work.

The CHAIRMAN. I am told that this Metcalf bill covers work being performed by the Government itself.

Mr. NELSON. I have nothing further to say at this time.

The CHAIRMAN. Are there any further questions by members of the committee? [After a pause.] Apparently not. We thank you very much for your statement, Mr. Nelson.

Does anybody else desire to be heard this morning? [After a pause.] If not, let us adjourn, to meet at 10 o'clock a. m. next Friday.

(Thereupon, at 12.10 o'clock p. m., on Tuesday, May 3, 1932, the committee adjourned, to meet next Friday at 10 o'clock a. m.)

REGULATION OF WAGES PAID TO EMPLOYEES BY CONTRACTORS AWARDED GOVERNMENT BUILDING CONTRACTS

MONDAY, MAY 9, 1932

HOUSE OF REPRESENTATIVES,
COMMITTEE ON LABOR,
Washington, D. C.

The committee met at 10 o'clock a. m., Hon. William P. Connery, jr. (chairman), presiding.

The CHAIRMAN. The committee will come to order. The first witness this morning is Mr. Andrew Furuseth, president of the International Seamen's Union.

STATEMENT OF ANDREW FURUSETH, PRESIDENT INTERNATIONAL SEAMEN'S UNION OF AMERICA, EBBITT HOTEL, WASHINGTON, D. C.

Mr. FURUSETH. Mr. Chairman and members of the committee, I have come here this morning to say a few words in explanation of why we seamen are against a bill of this kind.

We have had some very drastic experiences with the Shipping Board, in reference to the conditions under which we were going to labor, while at the same time they set aside the laws which had been made for the protection of the seamen and for the safety of the traveling public.

They set the wages to please themselves, utterly disregarding the prevailing wages.

They swept away whatever they wanted to sweep away, and when it comes to fighting against such determination, which, of course, the Government as an employer has a right to do, we are up against this situation.

I say, we meet the Government as the executive part of the country, and we are also up against the courts and against those who have the power, or at least exercise the power to set aside any laws that stand in the way.

Our experience is that the private employer sets the wages a little below the Government wages, and that the men who have to do the work are helpless.

The law enacted by Congress gives to the Secretary of Labor, or imposes upon the Secretary of Labor, the duty to ascertain what the prevailing rate of wages is. He is equipped for that; he has got the machinery through which he can ascertain that, and his duty, under the law, is to give that information to the rest of the departments, and to the public generally, as I understand the existing law.

The Senate bill, S. 3847, gives him the right to determine the wages. For that he is not equipped at all.

He is like the rest of the Cabinet officers; they are the President's clerks. They have no responsibility except to the President, and since there is no record kept, so far as we know, or if there was any, it would not mean much, and the President votes for the whole Cabinet; so the situation under the Secretary's duty to set wages and determine wages will be, first, a consultation with the Cabinet and the President, and then an obedience to whatever determination they come to.

They will reach their idea of what wages should be through consultation with those who take the contract, or operate the work, or whatever it may be, and the Secretary of Labor will either determine it according to their advice or quit his job.

In other words, then, it is simply a roundabout way of setting wages by legislation, or, if not by legislation, by decree issued by the Government. Whether those decrees are right or wrong, under our system, is more than I can say; I do not know.

With reference to the result upon our system generally, I want to call your attention to the fact that while the Department of Labor and this committee exists more especially for the protection of labor, not only against the employer, but against itself, the duty of the Secretary would be to do everything that he could do to keep labor's condition at least from getting any worse than it is or may be at the time.

But the position that he occupies would make that impossible.

So that the sum total of this bill is merely to legislate out of existence what we call collective bargaining. The Government sets wages as an employer; the Government enforces wages as part of the executive function of the United States. The workingman will either have to work at those wages or he will not work at all, and if he resists publicly and openly and collectively, he will be up against the equity court, disobedience to which means imprisonment, and the result is the setting aside of the thirteenth amendment to the Constitution, the purpose of which was to make labor free.

In the Supreme Court of the United States, in the case of Bailey *v.* Alabama, the court said, in substance, this, and the words are exactly the same——

The CHAIRMAN. Mr. Furuseth, will you give way for a moment so that a Member of the House may offer a letter for the record?

Mr. FURUSETH. Certainly.

STATEMENT OF HON. THOMAS A. YON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. YON. Mr. Chairman and members of the committee, I have here a letter which I would like to submit for the record.

I just came in to see the chairman on some other matter, and he mentioned these hearings being held on the Metcalf bill, and I would like to present this letter which I have received from one of the oldest and best firms in my district. This is an indorsement of the Metcalf bill, and this indorsement is concurred in by myself.

(The letter referred to is as follows:)

PENSACOLA, FLA.

Hon. TOM YON,
Member of Congress, House of Representatives, Washington, D. C.

DEAR CONGRESSMAN: The Davis-Bacon Act passed by Congress on March 3, 1931, and codified as title 40, paragraph 276–a, provides that every contract in

excess of $5,000 involving the employment of laborers or mechanics in the construction, alteration, or repair of public buildings of the United States shall contain a provision that the rate of wage of all laborers and mechanics employed thereon shall be not less than the prevailing rate of wages for work of a similar nature in the city, town, village, or other civil division of the State in which the work is located, etc.

Also there are now pending in Congress other bills which would eliminate the $5,000 limit and make the act apply to all public work and this act has been supplemented by an Executive order issued by President Hoover on January 19, 1932, requiring an additional stipulation in the contract that the wages shall be paid unconditionally, in full, not less often than once a week, in lawful money of the United States to the full amount accrued to each individual at the time of payment without subsequent deduction or rebate of any account. The order further provides that every person performing work as a laborer or mechanic on such public work shall be included in this provision, regardless of any contractual relationship between the contractor or subcontractor and such laborer or mechanic. The order further provides for inspection of the pay rolls, contracts, and agreements of the contractor and all subcontractors by the contracting officer. It further provides that should it be found by the contracting officer that any such laborer or mechanic has been or is being paid a rate of wages less than the prevailing rate, the Government may terminate the contractor's right to proceed with the work and take over the work and complete it by contract or otherwise and the contractor and his sureties shall be liable to the Government for any excess costs occasioned thereby.

The act and the Executive order supplementing it constitute the most far-reaching and drastic legislation as to public contracts that has ever been passed:

Under it no contractor or his surety has any protection whatsoever and cases have already arisen in which the contracting officer, by requiring increases in the wage scale, has threatened financial ruin to the contractor and severe loss to his surety.

An illustrative case is as follows. A construction company having just completed a public building for the United States in a small town, was given a contract for a similar building in another small town 40 miles away in an adjoining county. (It had investigated the prevailing rate of wages in the new town, found them to be slightly in excess of what it had been paying and made up and submitted its bid accordingly.)

Three months after the award of the contract the Government department concerned questioned the rates; thereupon a meeting was had with the construction engineer, the postmaster, the mayor, the secretary of the chamber of commerce, and representatives of trades and labor organizations and a scale of wages agreed upon by all was established. (This scale was in excess of that used by the contractor in figuring his bid.)

Two months later Government officials again investigated, conferring with citizens of the town as well as the men on the job and then expressed themselves as satisfied that the law was being complied with. Three weeks later the construction company was notified that the Secretary of Labor had decided that the prevailing wage rates existing in that "district" were according to a scale furnished and demand was made upon the company to at once pay these rates.

This resulted in the following increases: Bricklayers, 66⅔ per cent; carpenters, 50 per cent; common labor, 25 per cent.

The new scale is the prevailing rate in the largest city in the State, which is 160 miles away, but it does not obtain anywhere else in that State. Also the company is employing all local labor.

The results are: 1. The construction company is facing bankruptcy. 2. The local labor situation is upset and employers of labor on non-Government contracts are complaiinng bitterly.

When a contractor bids on public work obviously what he must do is to ascertain what the various materials needed will cost, how much labor will be required and the sum total of these, together with an estimated allowance for overhead, use of plant and equipment, etc., plus a reasonable profit, becomes the amount of bid he submits. As to the material, prudent contractors secure definite offers from the manufacturers or producers to furnish these at a certain price in the event he is awarded the contract. These figures make up his cost of material. As to labor, he ascertains what it will cost him to procure a suitable amount of both skilled or unskilled labor in the particular community and this is the basis for his computation as to labor cost. As to skilled labor, he usually contracts with them to work for him at an agreed upon figure.

From the foregoing it would seem obvious that if the prevailing rate of wages for work of a similar nature increases, this increased cost necessarily diminishes the profit on the contract and in many instances entirely consumes it with the result that the contractor or his surety have to pay the added amount out of their own pockets. Of course, if wages go down it would seem to mean an added profit to the contractor. However, usually the contractor is unable to reduce the wages he is paying both because of agreements he has made with them for employment at a stipulated wage and because a reduction in wage results in dissatisfaction and indifferent work or strikes or both.

To cure, as far as possible, this unfair and revolutionary provision of the present act and Executive order, a bill has been introduced in the Senate by Senator Metcalf of Rhode Island, known as Senate bill 3847 (72d Cong., 1st sess.) amend the act of March 3, 1931, providing in substance as follows:

(1) That the advertised specifications for every contract in excess of $5,000 to which the United States is to become a party shall contain a provision stating the prevailing rate of wages as determined by the Secretary of Labor in the locality in which the work is to be performed.

(2) That is the work requires more than three months for its completion the Secretary of Labor at the request of the department head or the contractor or the laborers and mechanics, shall from time to time reexamine the prevailing rate and if such rate is found to be increased or decreased from that stated in the specifications and made a part of the contract, he shall notify the contractor thereof and the contractor and his subcontractor shall pay the rate of wages stated in a notification from the beginning of the next pay period following the receipt of such notification.

(3) In the event the rate of wages is so increased, an amount equal to the amount of such increase in any one month shall be paid to the contractor by the United States and in the event of a decrease the contract price shall be decreased by the amount of such decrease in wages.

(4) The bill further provides for penalties for violations, to be deducted by the Comptroller General from any moneys due the contractor or for a suit against him and his surety and the amount so collected to be first applied to the payment of the laborers and mechanics of any difference between the pay actually received and that they should have received, the balance to be turned into the treasury.

The passage of Senator Metcalf's bill is of vital interest not only to contractors and their sureties, but also to every employer of labor both skilled and unskilled of non-Government work. The provisions of the bill ate obviously fair to the laborer, to the contractor and to the Government and it is believed it should be promptly enacted into law. This bill (S. 3847) has already passed the Senate and has been referred to the House Committee on Labor.

I am writing to request that you not only favor the bill, but also that you do all in your power to have it promptly considered by your committee and returned to the House with a favorable report.

I will appreciate your advices as to the situation, and particularly whether in your judgment there is anything further that I can do to assist in the prompt enactment of this bill into law.

Very truly yours,

THE H. H. THORNTON CO.,
By L. E. THORNTON,
Vice President.

Mr. FURUSETH. The court says, in substance, the words "involuntary servitude," have a larger meaning than slavery. The plain intention was to abolish slavery of whatever name, and to render impossible any state of bondage, to make labor free by prohibiting that control by which the personal service of one man is disposed of or coerced for another's benefit, which is the essence of involuntary servitude.

Mr. WELCH. Did you appear before the Committee on Education and Labor of the Senate when this bill was under consideration?

Mr. FURUSETH. I did not know anything about it; I did not know that there was any such bill or that there was any such hearing. It seemed to come out of a clear sky.

The CHAIRMAN. I have been listening very attentively to what you have said, Mr. Furuseth.

You spoke about the equity courts setting a rate of wages. As a matter of fact, it was labor who originally asked that the wages be set by predetermination in the other bill, in the Davis-Bacon bill.

Mr. FURUSETH. Yes, that is true. There is a fundamental difference between the two. In the one, as I tried to say, the Secretary of Labor, because he has the facilities to ascertain the prevailing rate of wages is, has simply to find out what it is and inform the rest of the Cabinet Officers and the world what it is.

The CHAIRMAN. That is what he does under the new bill.

Mr. FURUSETH. No. Here he has a right to set them.

The CHAIRMAN. He can set them under the Davis-Bacon bill, if there is any dispute?

Mr. FURUSETH. Yes; he can say, as I understand it, what the prevailing rate is, not what it ought to be. As I understand this bill, he can say what it ought to be.

Mr. RAMSPECK. No. The only difference between this bill and the Davis-Bacon bill is that he does it before the contract is let instead of after a dispute has arisen.

The CHAIRMAN. It contains a provision providing for the setting of the prevailing rate of wages.

Mr. WELCH. The title of the bill is, "An act to amend an act approved March 3, 1931, relating to the rate of wages for laborers and mechanics employed by contractors and subcontractors on public buildings."

The bill goes a little further than that and provides for public buildings and public works. How will that affect the seamen?

Mr. FURUSETH. Public works is the operation of ships, of course, under Government control, ships that are Government owned and operated under the Shipping Board.

Mr. WELCH. What ships are under Government control?

Mr. FURUSETH. Shipping Board ships.

Mr. WELCH. How many have they now?

Mr. FURUSETH. They have quite a number yet, but fortunately we are getting less and less of them.

Mr. WELCH. You know it is only a question of time when they will dispose of everything they have.

Mr. FURUSETH. I hope they will dispose of it now; the sooner the better.

Mr. WELCH. What is the name of the board that determines wages for seamen on Government ships?

Mr. FURUSETH. The sea service bureau.

Mr. WELCH. They fix the wage scale now, do they not?

Mr. FURUSETH. No; the operating department fixes the scale. The sea service bureau selects the men.

Mr. WELCH. Does not the sea service bureau fix the wages for seamen?

Mr. FURUSETH. No, I do not think so. That was originally done by the board.

Mr. WELCH. By the Shipping Board?

Mr. FURUSETH. Yes.

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Mr. WELCH. You mean to convey to the committees that the Shipping Board as a board, fixes the wages paid to seamen on such ships as they have under their control?

Mr. FURUSETH. Yes.

Mr. WELCH. Would there be any harm in having the wages so fixed by the Secretary of Labor and not by the Shipping Board?

Mr. FURUSETH. No; I am dealing with the whole principle.

Mr. WELCH. Let us get down to concrete cases.

Mr. FURUSETH. I do not expect that what I have to say will amount to anything more than just a gesture of protest; that is all. I expect nothing else from it.

But whoever predetermines the wages, whoever does that, if he has the power to enforce his will, or if they have the power to enforce their will, robs the worker of his freedom and the opportunity to have something to say about it himself; that is all.

Mr. WELCH. As far as this bill could possibly apply to those you represent——

Mr. FURUSETH (interposing). It may or it may not.

Mr. WELCH. It does not make any difference whether the Shipping Board, as you say, should have the right to fix the wages of seamen or whether it be left to the Secretary of Labor?

Mr. FURUSETH. It would not make much difference where it was left.

Mr. WELCH. I would say it would be if I were a seaman, or if I were representing the seamen, which, of course, I am not, and if I were I could not represent them as ably as you represent them.

But the Shipping Board is selected from different sections of the United States and is supposed to be a nonpartisan board, made up of representatives of the Republican and Democratic Parties.

They have nothing in common with the Seamen's Union which you represent. They have had no affiliation with labor, as a body, although some of them may have had.

On the other hand, since the Cabinet office of Secretary of Labor was created by Congress, the Secretaries of Labor, fortunately—and let us hope it will continue—have been men who were actually affiliated with labor and have had labor's interest before them at all times, commencing with the first Secretary, Mr. William B. Wilson, whom you concede was a good man.

Mr. FURUSETH. Of course.

Mr. WELCH. And Secretary Davis came from the ranks of labor and still has their interests at heart. Secretary Doak's affiliation and position with labor we all know.

Secretary Doak brought to me, as chairman of this committee, the prevailing wage rate bill which was drafted by him, with the assistance of two or three other department heads of the Government, and he appeared before this committee in person in behalf of the bill.

Mr. FURUSETH. That is true; but even if the Secretary of Labor was the reincarnation of Jesus Christ, he will either die or be displaced by somebody else, and the law goes on forever until it is changed.

The CHAIRMAN. It could be changed by Congress at any time.

Mr. FURUSETH. Yes; but I have found difficulty at times in changing the law.

Mr. RAMSPECK. Do I understand that you opposed the Davis-Bacon Act also?

Mr. FURUSETH. Originally I was opposed to it, but as the rest of them wanted it, and it only went to the extent of being an administrative act, as I understood it, and the Secretary had the best facilities of anybody for knowing what the prevailing rates of wages are, I agreed to it.

The distinction between that bill and this, as I understand it, is this, that that one put the duty as an administrator upon him to say what the prevailing rates of wages are, while under the new bill he is given really the power to tell what they ought to be.

Mr. RAMSPECK. You are mistaken about that. If you will read the bill you will see it does not give him any new authority as to the rate of wages. It simply says he shall determine it in advance instead of afterwards.

Mr. FURUSETH. I have said all I want to say about it, Mr. Chairman. I do not expect to do anything here except to call attention to what I believe is a fundamental error, leading to the disregard of the freedom guaranteed to men through the thirteenth amendment of the Constitution. That is the sum total of what I want to say.

The CHAIRMAN. We thank you, Mr. Furuseth.

Mr. KELLER. Mr. Chairman, I ask the privilege of inserting in the record a letter I have received from the executive vice president of the Illinois Manufacturers' Association with reference to this bill.

The CHAIRMAN. Without objection, that may be inserted in the record.

(The matter above referred to is as follows:)

ILLINOIS MANUFACTURERS' ASSOCIATION,
Chicago, May 7, 1932.

Hon. KENT E. KELLER,
House Office Building, Washington, D. C.

MY DEAR MR. KELLER: I am attaching a copy of a letter we are writing to Hon. William P. Connery, Jr., Chairman of the House Labor Committee, which is self-explanatory.

You will recall we requested the opportunity of appearing before the committee. You were extremely helpful in arranging this hearing but unfortunately on account of the fact that the Illinois General Assembly was in session last week we were unable to be present on the date indicated.

We will be particularly grateful if you will cooperate in our request to have this statement read to the committee before action is taken. This matter is of great importance to our membership and your cooperation along the lines suggested will be deeply appreciated.

Very truly yours,

JAMES L. DONNELLY,
Executive Vice President.

ILLINOIS MANUFACTURERS' ASSOCIATION,
Chicago, May 7, 1932.

Hon. WILLIAM P. CONNERY, JR.,
Chairman House Labor Committee,
House Office Building, Washington, D. C.

DEAR MR. CONNERY: We are submitting herewith a statement by the Illinois Manufacturers' Association, relative to the Metcalf bill (S. 3847), prevailing rate legislation, which is, we believe, self-explanatory.

This statement represents the views of the manufacturers of Illinois upon this proposed legislation and we will be very grateful if you will, as chairman of the committee, undertake to have our statement brought to the attention of the

members of the House Labor Committee before action is taken on the measure.

Assuring you of our appreciation of your cooperation in this respect, we are,

Respectfully yours,

JAMES L. DONNELLY,
Executive Vice President.

STATEMENT BY ILLINOIS MANUFACTURERS' ASSOCIATION RELATIVE TO METCALF BILL (S. 3847)

The Illinois Manufacturers' Association wishes to take this means to earnesly protest against the enactment of the above measure.

The act of March 3, 1931 (the Davis-Bacon Act), requires the payment of the so-called prevailing rate of wage to laborers and mechanics on Federal building contracts.

The bill now under consideration would extend the application of the so-called prevailing rate of wage to all public works engaged in by the Federal Government as well as to work by Government plant and hired labor which could have been performed under contract, but not including work in arsenals or navy yards.

We do not question the propriety of the Federal Government paying a reasonable rate of wages.

We submit, however, that the effort to determine by legislation the rate of wage to be paid on governmental projects in the manner provided in this and similar so-called prevailing rate of wage measures is impracticable, economically unsound, and utterly unfair to the taxpayers.

Although this so-called prevailing rate of wage legislation has been promoted in our Federal Congress and in the various State legislatures under the guise of a means for insuring payment of a reasonable wage on public projects, we believe that the principal motivating influence has been and is the ambition of organized labor leaders to impose indefensible scales of wages of their own concoction upon Federal, State, and local taxpayers.

We believe that the practical result of this type of legislation has been and will be to materially increase the cost of construction of public works, and to seriously curtail the volume of such work, with a corresponding increase in unemployment, and a serious increase in the cost of governmental operations to the already overburdened taxpayers.

We understand that under similar existing laws—although what constitutes the prevailing rate of wages is a question of fact in relation to the kind of labor for which the worker is paid—in the majority of instances an artificial standard representing the so-called union scale of wages has been adopted as the prevailing rate of wages.

An illustration of the practical operation of this type of legislation is furnished by the recent experience of the State of Illinois. A measure providing for the so-called prevailing rate of wage on public works was enacted by the Illinois General Assembly in 1931. Immediately following the passage of the bill, the State undertook to let contracts covering over 80 highway construction projects. The representatives of organized labor immediately challenged the rates incorporated in the advertisements for bids and contended that the intent of the law was that the prevailing rate of wage should be the highest rate paid in a given locality, irrespective of the fact that such rate was paid only to a relatively small portion of the aggregate number of workers engaged in work of similar character in the said locality—that, in effect, the union scale of wages is always the prevailing rate of wages—whether so in fact or not.

They cited as justification for their contention the rulings by the Secretary of Labor under the so-called Federal prevailing wage act of March 3, 1931. As a result of these protests public highway construction, representing an outlay of over $4,500,000 was seriously delayed depriving thousands of men of an opportunity for employment, while the validity of the law was being tested. If the contention of the complainants had prevailed, the amount of highway construction in Illinois would have been reduced approximately 40 per cent, with corresponding increase in unemployment, both on the roads and in the plants furnishing materials, and material injury to the taxpayers of the State. Fortunately, the measure was declared invalid.

This present proposal (S. 3847) not only extends the application of the prevailing rate of wage to cover all public works engaged in by the Federal Government, but extends the principle of the prevailing rate of wage to work by Government plant and hired labor which could have been performed under contract, but not including work in arsenals or navy yards.

This provision would, no doubt, be construed to mean that the wage scale arbitrarily set by organized labor will be made applicable to any departmental work of the Federal Government which is of such character that it would be possible for the Government to have such work performed under contract—notwithstanding the fact that it might not be desirable for the Government to have such work done under contract and notwithstanding the fact that the Government does not elect to have such work performed by private contractors. For example, this provision could be construed to cover employees in the Government Printing Office, the Post Office Department, the various mints, the Bureau of Standards, and much of the work in the Department of Commerce or other governmental departmental operations which do not inherently involve the exercise of real governmental functions.

The result of the naturally ensuing organizing of the bureaus can readily be seen.

The provisions of this bill would probably be construed to cover all Federal-aid highway work in all the States of the United States. In Illinois this would cover about one-third of the annual $30,000,000 of highway construction projects. It is estimated, however, that the serious legal questions of construction of the statute involved would hold up for many months—and probably for the duration of the present season—some $6,000,000 of highway construction work in Illinois alone.

Since different scales of wages can not, as a practical matter, be satisfactorily maintained on contemporary public work, the practical result of this bill would be the forcing of the arbitrary union scales of wages upon all States choosing to build Federal-aid highways for all their public work. The local governments would be affected. Private industry would be affected. An endless chain of governmental interference would be the result.

The practical result of this startling extension of the principle of the so-called prevailing rate of wage would be the organizing of the various Federal, State, and local governmental departments, and unwarranted interference with business.

At this time, when the entire country is harassed with excessive burdens of taxation, when the need for governmental economy is so universal, and when business is so disturbed, the effort to go extend this so-called prevailing wage principle is wholly indefensible.

The extent to which the proponents of this measure are willing to go in their ambition to exploit the general public to promote their selfish interests is evidenced by the fact that this proposed amendment to the prevailing rate of wage law would remove from the law the present provision that in time of emergency its operations may be suspended by the President of the United States. The practical result of this latter provision would be that during times of emergency, including periods when the country was at war, the rates of pay for employees of the various governmental departments affected as well as the rate of pay incorporated in public-works contracts, would be determined not by the Government but by organized-labor leaders.

We know we are warranted in the assumption that the majority of the Members of the Federal Congress would not purposely impose this flagrantly unfair, costly, and destructive legislation upon the people of the country.

We respectfully and earnestly submit that this measure should be defeated.

The CHAIRMAN. We will now hear Mr. John Frye, secretary of the Metal Trades Department of the American Federation of Labor.

STATEMENT OF JOHN FRYE, SECRETARY AND TREASURER METAL TRADES DEPARTMENT, AMERICAN FEDERATION OF LABOR

Mr. FRYE. Mr. Chairman and members of the committee, I am appearing this morning as secretary of the metal trades department of the American Federation of Labor, to speak for all of the international unions who comprise the metal trades department—that is, all of the metal working trades unions in the country, including those that are sometimes considered as purely building trades, such as the structural iron workers.

Our attention was first called to the bill last week, as the result of a hearing held by this committee. As soon as we heard of the hearing,

and some subjects brought into the hearing we had a series of conferences of the representatives of the international unions comprising the department of which I am secretary, and as a result of those conferences we reached the conclusion that as representing the organized metal trades group in the United States it was necessary for us to request this committee to amend the bill so that shipbuilding would be excluded.

The suggested amendment would come in on line 1 of page 2, so that it would read: "Public buildings or public works, except shipbuilding, in the District of Columbia," and so forth.

The American Federation of Labor, as you are all aware, is divided into departments for the purpose of allowing the groups to give special consideration to their own interests. One group is made up of the building-trades men.

This bill is particularly a building trades bill—that is, it will affect them—and it has come as the result of the previous bill which established a prevailing rate of wage.

The CHAIRMAN. Do I understand that you are opposed to this being applied to the shipbuilding industry?

Mr. FRYE. Yes.

The CHAIRMAN. I know the shipbuilders are against it, and I am rather surprised to find labor against it.

Mr. FRYE. Sometimes it is true, Mr. Chairman, that the employers and labor are opposed to the same thing. I can give you a concrete illustration.

The American Federation of Labor is opposed to the Volstead Act, and I can bring you the names of a large number of manufacturers who are no friends of ours, who happen to be in the same position on that question.

The CHAIRMAN. For different reasons?

Mr. FRYE. For different reasons.

Mr. KELLER. Do I understand that the American Federation of Labor as a whole is committeed to that idea?

Mr. FRYE. To the modification of the Volstead Act?

Mr. KELLER. Yes.

Mr. FRYE. Yes.

Mr. KELLER. The whole Federation, without any exception at all?

Mr. FRYE. The Federation of Labor, in its convention—I am not sure about the date; I think it was in almost the same year when the eighteenth amendment and the Volstead Act were adopted—declared for 2.75 per cent by weight of alcohol in beer. We have never changed our position, and we have reaffirmed that.

Mr. KELLER. The thing I really wanted to ask was whether they are against the eighteenth amendment?

Mr. FRYE. They have never taken any official action on that.

Mr. KELLER. I thank you.

Mr. FRYE. The metal trades department will not come before this committee to discuss the bill as a whole, because it is primarily a subject for the building trades to discuss.

But on this question of the prevailing wage being applied to the shipbuilding industry, the metal trades department finds itself in most vigorous opposition.

Mr. WELCH. Excuse me for interrupting you, but you are making a distinction between ships built by the United States Government

and ships built by private industry? This bill, even in its present form, would only apply to ships constructed by the United States Government. That would apply to our navy yards, would it not?

Mr. FRYE. My understanding of the bill—that is, S. 3847—is that if it passes, the predetermined wage rate would apply to Government vessels built by private shipyards.

Mr. RAMSPECK. You mean under contract with the United States?

Mr. FRYE. Yes.

Mr. WELCH. What vessels are under contract?

Mr. FRYE. Private shipyards build battleships and cruisers, and other ships of the United States, vessels used by the United States Navy and the Coast Guard.

Mr. WELCH. Are there any Government vessels under contract now?

Mr. FRYE. Yes; there are a number.

Mr. WELCH. In private shipyards?

Mr. FRYE. In private shipyards. Not only are there a number of naval vessels under construction in private shipyards, but there are also a large number of liners being built under the provisions of the White-Jones Act.

The CHAIRMAN. If they were building a battleship at the Fore River yards, what would your objection be to the Secretary of Labor setting the wages at the prevailing rate of wage at the shipyards? The contractors fear it is going to bring wages up.

Mr. FRYE. I understand they fear that. What I would like to make clear is that the situation, so far as the building trades wages and the metal trades wages are concerned, are two entirely different questions. The Secretary of Labor has data at his disposal with reference to rates paid to building-trades men in every locality in the United States. That data is continuous, and every change is recorded, so there is no difficulty whatever in determining what the wages are for any given building trade in any part of the United States at any time.

The Department of Labor has no such data for metal trades. It has no machinery for securing such data. The metal trades wage data published by the Department of Labor are of absolutely no value to anyone, except in so far as they would indicate from time to time general changes, advances, and reductions. But so far as actual wage rates are concerned, I want to emphasize that they are of absolutely no value to anyone.

The CHAIRMAN. The metal workers work on vessels?

Mr. FRYE. Yes.

The CHAIRMAN. Under the provisions of the present Davis-Bacon Act, what does the Secretary of Labor do in a dispute in reference to metal workers?

Mr. FRYE. He has not been called to act, and he would have no definite material to go by.

I would like to go into this briefly, so people will understand the distinction. If, when the Davis-Bacon Act was being considered, the question had gone further than the erection of the building, you would have had an entirely different problem. Had the question of partly manufactured articles going into the building come up, it would have involved the question of wages paid by the quarry to the men taking the stone out, and the wages paid in the brickyards, and

wages paid to men in the steel plants. It would have gone much further than the erection of the building.

The CHAIRMAN. They did not go into that.

Mr. FRYE. Exactly. That is the identical thing, Mr. Chairman which the Secretary of Labor would go into immediately when this bill passed unless the private shipyards were eliminated.

The CHAIRMAN. Why?

Mr. FRYE. Because there is no data in existence which anyone can get at to determine what the prevailing wage is.

Mr. WELCH. Let us confine ourselves to shipbuilding.

Mr. FRYE. All right.

Mr. WELCH. How many private shipyards are building Government vessels at this time under private contract?

Mr. FRYE. I think all of the private shipyards along the North Atlantic coast, starting with the Fore River Shipyard, then coming down to New York to the yard of the New York Shipbuilding Co. and the other yards there, and then coming down to the Philadelphia district and going right down to Norfolk, where the Newport News Dry Dock & Shipbuilding Co. has its plant—all of them are constructing vessels being built in whole or in part by Government money.

Mr. WELCH. Those vessels that are being paid for by loans from the Government would not come under the provisions of this bill, but if the yards have contracts to build cruisers, they would.

Mr. FRYE. They are building cruisers and they are building other boats now.

Mr. WELCH. In the case of merchant vessels that they have contracts for, where the money is provided for by the United States Government in the form of a loan, those would not come under the provisions of this act.

May I ask you this question? Take the Fore River yard, and the Newport News yard, and the other privately owned shipyards that are building Government vessels with a direct contract from the Government through the Navy Department; are they paying the same scale of wages that is being paid by the Brooklyn Navy Yard, by the Norfolk Navy Yard, and by the Mare Island Navy Yard?

Mr. FRYE. I can only offer an opinion, and that is that they are not.

The CHAIRMAN. They are paying less?

Mr. FRYE. They are paying less.

The CHAIRMAN. This would bring them up.

Mr. WELCH. This would leave it to the Secretary of Labor to predetermine the wages. Would he not say, for instance, "All right, Mr. Frye and Mr. Welch, you, as the heads of the Newport News Shipbuilding Co. have contracts to build a man-of-war, or to build any other kind of craft, directly from the Government, through the Navy Department, and under this bill you will pay the identical wage scale paid by the United States Government in the navy yard." There is a standard. Have you thought of that, Mr. Frye?

Mr. FRYE. I have.

Mr. WELCH. I will bring that closer to home. Only recently, Mr. George Arms, who is personally known to me and is the head of the United Engineering Co., with an office at San Francisco and a shipyard in Oakland, a man whom you know very well, secured a contract

for the reconditioning of the U. S. S. *Grant*, a transport. It was quite a sizeable contract.

There is nothing in present law which will compel him to pay the same rate of wages paid in the Mare Island Navy Yard, within 50 miles of his yard.

But if this bill was in effect and in force, the Secretary of Labor would say to Mr. Arms, who by the way has been fair to labor—and there are others out there who have not been; and I am speaking in this way because I am familiar with the conditions in my own section—what the Secretary of Labor would say to Mr. Arms, or would say to the Bethlehem Steel Co., or any other shipyard on the Pacific coast, would be this: "When bidding on this contract you figure the identical wage scale paid by the United States Government in the Mare Island Navy Yard."

I will ask you if you have given that serious thought.

Mr. FRYE. I have.

Mr. WELCH. And so it would be in the case of the Newport News and the Fore River yards.

The Secretary of Labor would say to those gentlemen, in figuring on a job: "It is expected of you; it is mandatory under the law, that you pay the same wage scale on this job that we are paying for the same character of work in a Government navy yard," and that condition does not prevail either on this coast or on the west coast.

Mr. FRYE. My answer to that would be that unless the United States Government could compel the private shipyards to carry on a system of bookkeeping established for them, there would be no way of knowing what wages they are paying.

The CHAIRMAN. That is taken care of in the bill. At the request of any group that is under investigation by the Secretary of Labor, there are three different ways to take care of that.

Mr. FRYE. Mr. Chairman, I have had the responsibility for several years of being the representative of the American Federation of Labor on the Navy wage review board, consisting of two members of the Navy Department and one representative of the American Federation of Labor, to prepare the wage scales for all navy-yard employees, subject, of course, to the approval of the Secretary of the Navy.

That has made it necessary that I should become somewhat familiar with the wage-gathering data, so far as metal workers are concerned, that is available to the United States Government.

I have made the statement to-day that the data collected by the Bureau of Labor Statistics in the Department of Labor is absolutely valueless, except as it may indicate that over a period of time wages have gone up or gone down.

The machinery available at the Navy Department for collecting wage data has been based partly upon the experience of the local wage boards, composed of detailed officers of the Navy and employees in the yards. They gather the wage data that is submitted by the local Navy wage boards to the Navy Department.

My experience has convinced me that at least 75 per cent of that data was absolutely valueless as any indication of the wages that should be paid in the navy yards.

The CHAIRMAN. I know your capabilities and those of the rest of you gentlemen. You are not going to seriously tell us that you can

not get information in the Charlestown Navy Yard and the Fore River shipyard and give it to the Secretary of Labor in order to advise him what the wages should be in the Fall River yard on a contract, when you know what they are paying in the Charlestown yard. You can say that the figures are wrong, but you would certainly know what they are paying in Charlestown and in Charleston, S. C., and the rates can be fixed for the Fall River shipyard in comparison with the rates paid at Charleston and Charlestown for the same line of work.

Mr. FRYE. I would not be prepared to agree to having the wages in private shipyards established by the current rate being paid in navy yards.

The CHAIRMAN. You would, if the rates paid in private yards were lower?

Mr. FRYE. No; unless before that there had been established machinery for gathering wage data, which we thought would be reasonably reliable.

Again, I want to say, Mr. Mr. Chairman, that the trouble is in the metal trades. There is no such condition there as there is in the building trades, and so far as the building trades are concerned, the Bacon-Davis bill and this bill apply merely to the erection of buildings. It is impossible to do that in the bulding of ships, because a large part of the material is partly manufactured on the outside.

In private industry there is no minimum wage rate, and there is nothing definite, except the basic hourly rate. It has developed that way through the metal trades. Each firm has its own basic hourly rate. That is not the wage total, the totla wages that the workman receives. That rate is used to establish piece rates. It is used as a basis for bonuses or for premiums, or some additional form of payment.

We have found it impossible, I have found it impossible, sitting on the Navy wage review board, to discover the wages paid in any private shipyards.

We have had them submit scales of wages to us. I have had coming in to my own possession the evidence involving the men, and have discovered in some cases that the amount actually received at the end of the week was in one case 60 per cent higher than the wage rate submitted to us by the officers of the yard.

Mr. WELCH. It has been my pleasure since I have been in Congress to sit in at a conference with your good self, representing labor, as you do, and well representing it, and with the Government board in fixing the wage scale for Government-owned shipyards; is not that a fact?

Mr. FRYE. Yes.

Mr. WELCH. You know, as I know—and you learned a trade in the metal trades, as I did—there is not a privately owned shipyard on the Atlantic coast, on the Gulf coast, or on the Pacific coast that pays the same wage scale that our Government navy yards pay, and the very purpose of your board, and the purpose of my joining with you, to whatever degree my presence meant at that conference, was to see to it, that the privately owned shipyards should not succeed in a general let down of the wage scale in the Government yards.

You know the condition of labor generally in the metal trades—that is, as it applies particularly to shipbuilding—would be better off to a great degree if every shipyard in the United States would pay the wage scale paid by the United States Government in its Government-owned yards.

I am not going to work at cross purposes with you on this bill, because I appreciate your knowledge and your devotion to the cause you represent; but as one who has had practical experience, and as one who has been a close observer of conditions, it appears to me that men in the metal trades, as applied to shipbuilding construction, would be better off by far if there was a predetermination of wages to be paid by private shipbuilding companies on Government work, taking the wages as fixed by the United States Government in Government-owned shipyards as a standard.

Mr. FRYE. I think we would be better off, Mr. Congressman.

Mr. WELCH. Infinitely better off.

Mr. FRYE. If there was a provision that in the cases of any private shipyard securing a contract it must pay the same wages that the Government is paying. But that is an entirely different matter from endeavoring to predetermine wages.

Mr. WELCH. Is not the wage scale fixed by the Government in shipyards predetermined? That was the purpose of the conference we had at the headquarters when I went with Doctor Hogan, who represented the Mare Island Navy Yard and the Vallejo Chamber of Commerce. We were there predetermining the wage for the coming year, and to see that there would be no let down. That has been your fight for years—to hold up the standard of wages paid by the Government in its shipyards, knowing that the minute the Government let down the private yards would go a step better. That is predetermination.

Mr. FRYE. That may be true, Mr. Congressman; but it is not the predetermination which has led the Metal Trades Department to desire to have private shipyards excluded from the scope of this bill.

Mr. KOPP. As I read this bill, private shipyards would not be included in it. If we mean to include private shipyards, I feel sure that we shall have to amend this bill, because it speaks very clearly of the site of the public works. Now, a ship is not a public works that has a site, and you will have to stretch the legal meaning of the term employed in this bill if you make it apply to a shipyard; I mean the building of a ship which has no site itself. In your specifications and in your advertising you can not specify half a dozen yards; you must specify the particular place where the work is to be performed, and the wage rates must be the prevailing rates at that place. Therefore, if you specify one shipyard, it will be the prevailing rate at that shipyard, which would be absurd and ridiculous—because it would let them determine their own rate. For instance, there are half a dozen shipyards in the United States, and if you undertook to give a ship to be built a site by fixing a particular shipyard, you would have to determine the prevailing rate at that shipyard. In my judgment the bill does not apply to shipyards.

The CHAIRMAN. The bill says:

For various grades of mechanics and laborers for work of a similar nature.

Mr. KOPP. Yes; but let us read this section from the beginning:

That the advertised specifications—

That is where it begins. That is before anybody has made a bid, and before the ship to be constructed is in existence.

That the advertised specifications for every contract in excess of $5,000 for construction, alteration, or repair of public buildings or public works in the District of Columbia or in any city, town, village, or other civil subdivision of any State, to which the United States or the District of Columbia is to become a party—

There is a serious question whether a ship in itself would be construed to be public works; but we shall go along—

is to become a party and which requires or involves the employment of mechanics or laborers shall contain a provision stating the prevailing rate of wages as determined by the Secretary of Labor, for various grades of mechanics and laborers for work of a similar nature in the District of Columbia or in the city, town, village, or other civil subdivision of any State in which all or the principal part of the particular contract work is located.

Now, we must locate that work in the specifications. We must locate it at a particular place, because the prevailing rate is the one that is to be paid at that particular place.

The CHAIRMAN. Suppose you set it at Charleston or Norfolk.

Mr. KOPP. We could not take into consideration what they paid at any other place.

The CHAIRMAN. You could take the Norfolk Navy Yard into consideration.

Mr. KOPP. We would have to take the prevailing rate at that place I do not believe it was the intention to include ships. In the first place, ships are not located anywhere. Building a ship is work, but ships are not public works in the sense that they are located in a particular civil subdivision, especially before they are constructed.

It goes on:

Shall pay the mechanics and laborers employed directly on the site of such work.

Altogether the bill refers to public works located at a particular place, and you have to take the prevailing rates at that particular place. I do not believe this bill could be made to apply to the building of a ship, without other language in the bill.

Mr. FRYE. Then, Mr. Congressman, if you are right——

The CHAIRMAN. He does not have to worry if you are right.

Mr. KOPP. I shall not presume to say that I am right. I think I am. But I am just suggesting this; and I doubt whether, when they drew this bill, they had the intention to include ships in it.

Mr. FRYE. If you are right, then Congressman Connery would want, of course, to amend the bill to include ships.

Mr. KOPP. I think, from your standpoint, if I were in your place, I would ask for the amendment, because the bill might be of doubtful construction, and should be clarified in the interest of either party. But from this standpoint, if we want ships in, I certainly feel that we ought to clarify the bill. If you want ships out, you probably ought to do the same thing if the bill is uncertain. But I feel sure that the lawyers who drew this bill never drew it with the intention of including the building of ships.

Mr. WELCH. No; I do not think so.

Mr. FRYE. I would like to reaffirm now the basis for our position in discussing the merits of the principle embodied in the bill—predetermined wages. There does not exist any machinery for the satisfactory collecting and analysis of metal trades wages.

The CHAIRMAN. You did not need any data when you were with Mr. Welch on that California proposition.

Mr. FRYE. We did have data.

The CHAIRMAN. You did not have any more data than the Secretary of Labor would have on this.

Mr. FRYE. The only wage data that affects workmen in navy yards is that which is collected by the Navy Department, and I briefly explained how that was done, through local wage boards consisting of naval officers who cooperate with the men in the yards. Now, I have been handling that data, and I made the statement a little while ago that I had reached the conclusion that 75 per cent of it was of absolutely no value to the Navy Department itself in endeavoring to fix wages; and I urged my point so strongly that the two representatives of the Navy who served on the board agreed with me. When the last report of a wage board was submitted to the Secretary of the Navy, which was in 1928, I called his attention to the unreliable character of the wage data that the Navy itself was collecting. The result was that the Secretary of the Navy authorized the board to sit for the special purpose of revising the rules and regulations under which wage data was collected. That has been done, and was applied for the first time in 1928.

The CHAIRMAN. What I want to know is, what danger to the metal trades organization would this bill bring about? Suppose there is not any data. Suppose the Secretary of Labor makes an arbitrary decision and says that wages shall be so much and so much. Where is your danger? If wages go up, the Government is supposed to reimburse the contractor; if they go down, the contractor is supposed to reimburse the Government. If the men do not want to work, they do not have to work, do they?

Mr. FRYE. The danger is this, Mr. Chairman, and it is a most live and serious danger: In the building trades you have a minimum wage rate for every trade, over which there is no question. In the metal trades there is no such minimum rate. There are many rates for different kinds of workmen, and the rates gathered by the employers' associations themselves, and the data gathered by the Metal Trades Association in its several centers, such as New York, New Jersey, Ohio, and so on, are valueless even to them, because they do not indicate the additional wages paid through piecework, premium, bonus, and other systems. There is no way of discovering what the wage is. The Department of Labor would have to have a force of experts, consisting of a large number of men, in the field all the time; the metal trades department would have to have a large force of men in the field all of the time, because when it comes to metal trades wages, the work that the men are on has much to do with the rate of wage they receive; so that if you will take the reports of the Metal Trades Association for New Jersey and New York you will find that there are molders, or men enumerated as molders, who are working for 25 or 30 per cent less than the union scale for molders in that territory.

The CHAIRMAN. All right. Granting all that, do you believe that if the Secretary of Labor were to set these rates, and there was a battleship being built at Fore River, the Secretary of Labor, taking into consideration piecework and everything else you have spoken about, would put the wages below those at the Charleston Navy Yard, or would put them above?

Mr. FRYE. I would not want to answer that question one way or the other. I would answer it in this way: That the Secretary of Labor, faced with that question, would be absolutely without any reliable data to govern him.

Mr. RAMSPECK. But you contend that that would not be true about the building trades; that you can get reliable wage data?

Mr. FRYE. You absolutely can.

Mr. RAMSPECK. You think that the building trades would favor this measure?

Mr. FRYE. I do not know what they would do.

Mr. RAMSPECK. What do you think about it, Mr. Chairman?

The CHAIRMAN. Mr. Welch and myself had a conference the other day with Mr. Green, of the American Federation of Labor, and Mr. Green was in favor of the bill. Now, labor is coming in this morning and I understand is going to oppose it; but in the conference that we had Mr. Green was in favor of the bill.

Mr. RAMSPECK. In order to clear up one question, your objection has no relation to the question of predetermination?

Mr. FRYE. I am not raising that question, Mr. Ramspeck.

Mr. RAMSPECK. You would be just as much opposed to extending the present law, the Davis-Bacon Act, to include shipbuilding?

Mr. FRYE. As conditions are in industry now, yes; and when I say "as they are in industry," I mean the ability, the capacity for the Secretary of Labor to find out what wages are. It can not be done. They are not standardized.

The CHAIRMAN. You want the Secretary of Labor to stay out of any disputes under the Davis-Bacon Act now, do you?

Mr. FRYE. No; I do not. I am merely taking this position, and let me make it clear now; that the Building Trades Department of the American Federation of Labor has its own responsibilities. Whatever its interest is in this bill, it is not any official matter for the Metal Trades Department; so the Metal Trades Department is not making any argument for or against the bill as a whole. But we are urging this committee to definitely except shipbuilding from having a predetermined wage set, because—if I have succeeded at all this morning in what I am trying to do—there does not exist any machinery in the United States that would enable any one to determine what the wages are in private industry.

The CHAIRMAN. If there were machinery, and if you had it down to the point where you knew exactly, which would be in favor of predetermination then?

Mr. FRYE. Mr. Chairman, you are leading me farther than I want to go, but I will answer that question without any hesitation. I would have no objection to the United States Government fixing the wages for everybody who is a wage earner in this country, provided at the same time it fixed the price that the grocer and the landlord and all the others had to sell for. I do not want to go into that argument, but that is my position.

Mr. RAMSPECK. Mr. Frye, the point that I was trying to get at, and which I do not think you understood exactly, was that the Bacon-Davis law does not now apply to your group.

Mr. FRYE. It does not.

Mr. RAMSPECK. And you would not want it to apply to them any more than you would want this bill to apply to them, would you?

Mr. FRYE. No; because if a dispute arose in a private shipyard we would endeavor to have the conciliation department of the Department of Labor take that up and adjust it.

Mr. WELCH. Make a distinction with regard to a private shipyard, Mr. Frye, please. A dispute on a private contract and a dispute on a Government contract are in two different classes entirely, and the distinction should be made every time reference is made to it.

Now, you know that if it were not for the militant fight, if I may use the word, made by yourself representing organized labor, through the American Federation of Labor, the Government would probably have responded to some degree, and there would have been a let-down in wages from that which they are paying to-day. The civil-service rules provide them for all civil-service men. They have a maximum and a minimum rate, and due to you and the American Federation of Labor, that rate is where it is to-day, and that rate is far beyond the rate paid by any private shipyard in the country.

Mr. FRYE. Briefly, there are two points that I would like to call your attention to, Congressman. One is that it is my belief that wages in the private shipyards are much lower——

Mr. WELCH (interposing). That is what I contend.

Mr. FRYE. But my examination of wage data, particularly pay envelopes collected from private shipyards, the last time the board met, to my surprise indicated that one of the largest shipyards on the Atlantic seaboard was paying, or had been paying, 28 cents an hour more than the union scale of a certain trade; because they had a much lower basic wage rate, but they added that much for work performed.

Now, there is another matter that I would like to call your attention to, because you are a metal trades mechanic and you understand it. In private industry and in the shipyards the line between the mechanic and the helper and the semiskilled man has been very largely broken down, and if you had a Government rate for ships constructed for the United States Government in private shipyards you would be having them built by men who were classified by the employer as helpers and handy men, and so on, instead of as mechanics, and there is no way that I know of of preventing that; whereas, fortunately, the Navy so far has taken the position that the work of a merchanic shall be done solely by a mechanic. In the private shipyards they have as many handy men and as many helpers around each mechanic as they can.

Mr. WELCH. Do they not have them now? Do they not take advantage of the unskilled labor that you refer to at the present time?

Mr. FRYE. In the Government yards?

Mr. WELCH. No, not in the Government yards; in private yards.

Mr. FRYE. Oh, they always have; yes.

Mr. WELCH. Then how would this bill make it any worse than it already is?

Mr. FRYE. It would make it worse because the yard would merely say, "We are paying this rate to mechanics; we are paying this rate to blacksmiths; we are paying this rate to electrical workers."

Mr. RAMSPECK. Are they not saying that now?

Mr. FRYE. No. Then, however, they would have an army of men who were getting helpers' wages and handy men's wages who would be doing mechanic's work.

Mr. WELCH. Why would it apply any more in the metal trades than in building? Take a hodcarrier and put him to laying brick.

Mr. FRYE. Ah, but the line of demarcation is established through agreements——

Mr. WELCH (interposing). Take the man who has never worked as a riveter but as a holder-on, and put him to work riveting and pay him the same wages as a holder-on. If that were brought to the attention of the Secretary of Labor, if this bill were in full force and effect, would he permit it?

Mr. FRYE. I do not know whether he would permit it.

Mr. WELCH. I do not think he would, any more than he would permit a hodcarrier—I use the common expression "hod carrier." Hod carrying, however, is now a lost art.

Mr. FRYE. They are "skipwrights" now.

Mr. WELCH. But take an unskilled laborer in the building trades; a man who has never qualified or been classified as a skilled laborer, and put him on skilled labor in order to beat the wage scale. The Secretary of Labor would not permit it any more than if they were to take an unskilled laborer in a shipyard, or in the metal trades, and put him in a mechanic's position. If it were called to his attention, he would not permit it.

Mr. FRYE. That is what they are doing in private shipyards now. They have an army of men who are not given mechanics' wages, but who have been trained to do mechanics' work and are doing mechanics' work, and they are out of luck, because they have no organization to protect them in the yard, and they have to accept the classification of laborer that the private shipyard gives them.

If my group—and I am expressing the group opinion now, because we have heard from all of our international unions on this matter—if our group was in complete agreement with all the principle there in this bill, they would still be just as strongly opposed to the private shipyards being included, because they know that there is absolutely no available machinery——

Mr. WELCH. No, no; please make that distinction—a private shipyard constructing Government work under contract with the United States Government.

Mr. FRYE. Yes, sir.

Mr. WELCH. I insist on that distinction being made. Neither this bill nor any other bill that Congress might pass could reach in and tell the Fore River, or Newport News, or the Bethlehem Steel, what wages they shall pay, unless they are performing Government work under Government contracts unless through a predetermination wage bill, such as the one before us.

Mr. RAMSPECK. Mr. Chairman, I can only speak for myself; but so far as I am concerned, where we have a situation that the employers object to this bill, and the representatives of organized labor object

to it, I am in favor of leaving them out and letting them worry over their own troubles.

The CHAIRMAN. We will let Mr. Frye conclude his statement, and then we have some more witnesses.

Mr. FRYE. I merely want to conclude by reiterating one thing, because that is so important to keep in mind: That if we were in full accord with the principle of predetermining the wage rate for all vessels built for the United States Government in private shipyards, we would still be opposed to the bill until we had seen created the machinery through which the wage determination would be made; because we are convinced that there is no such machinery in existence to-day.

Mr. WELCH. I am not going so far as you in your contention, but conditions in privately owned shipyards could not be worse than they are, and Congress could not pass any act that would possibly make them any worse. I know men who were working in 1928 (before the depression)—big, strong, husky men—for three and a half and four dollars a day in shipyards on the Pacific coast.

The CHAIRMAN. If Mr. Frye is through, we will call the next witness.

Mr. WELCH. What would you ask us to do, Mr. Frye?

Mr. FRYE. My suggestion was that line 1 on page 2 of S. 3847 be amended so as to read:

> Public buildings or public works, except shipbuilding, in the District of Columbia or in any city—

And so forth.

That is the amendment.

Mr. WELCH. Does that come anywhere else in the bill; do you know?

Mr. FRYE. That is the only place that it comes in the bill that I know of.

The CHAIRMAN. We thank you, Mr. Frye.

We will hear Mr. Joseph S. McDonagh, legislative representative of the International Brotherhood of Electrical Workers.

STATEMENT OF JOSEPH S. M'DONAGH, LEGISLATIVE REPRESENTATIVE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, WASHINGTON, D. C.

Mr. MCDONAGH. I have a brief here, Mr. Chairman, and some other data. I will rush through it, because I do not want to take up too much time.

Labor is opposed to predetermined wages.

This particular bill has not been asked for. This bill emanates from a source that has been antagonistic to organized labor, in season and out. The contractors have asked for the bill. The bonding companies and insurance companies have asked for it. They have circularized the country. I have here the Time Writing Bureau, the Union Indemnity Co., and a lot of other insurance companies that are bonding these irresponsible contractors that we have been battling against.

Representatives of the Associated General Contractors have made much ado about the indorsement given to Mr. Metcalf from Rhode

Island. They cited that here. In the election in Rhode Island Mr. Metcalf was defeated for delegate to the National Republican Convention. And, incidentally, I want to tell you that there is no politics in this so far as I am concerned. I am a Democrat.

It is rather significant that this legislation emanated from the United States Senate, where the majority is Republican.

Labor is rather confused, because on January 16, 1932, the President issued an Executive order on the prevailing rate of wage. We do not believe that enough time has elapsed to show that this kind of legislation is needed at the present time. I mean the Metcalf or the Connery bill.

The question has been repeatedly asked, What is the difference between predetermining the wage rate before the contracts are let and establishing the prevailing rate of wage after dispute arises? Theoretically there may be no difference, but in practice there is, as exhibits will show.

Here is a list of building-trades contracts, and this will go into every branch of contracts for the Government.

It is a physical impossibility for the Department of Labor now to cover all the contracts in the building industry. With the economy move, with the cutting down of appropriations, the passing of this bill is going to leave labor hanging in the air, even on the Bacon-Davis law that we have on the statute books, which was put in there at the request of labor to protect them from this group of irresponsible contractors that want to kick over the law now. They went into Long Island and built a stockade, for their labor slaves, and it has been a disgrace. Congressman Bacon and others can tell you all about it.

It will be stated that some leaders of labor have indorsed the bill. Some of them may have. But we believe that the largest block of organized labor in the building-trades industry, all of whom are represented here this morning, along with the representatives of the metal trades department and other affiliated organizations, are protesting some section of this particular bill. I believe that the American Federation of Labor would be 100 per cent against it if they knew its danger.

Labor representatives know the friendly attitude of this committee. We have talked it over, and we believe that there is only one committee in the House or in the Senate from whom labor can get any kind of a break, and that is right here and in the Senate Committee on Labor.

We know that 90 or 95 per cent of this committee are sympathetic to the aims and aspirations of labor, and we are sorry this morning to have to come in here and oppose a bill that they think is going to be beneficial; but from our experience in knocking around the departments for over two years to have the Bacon law enforced, we do not see where we are going to get off if this bill is written into law. It will nullify the Davis-Bacon law. You are not appropriating money for the Department of Labor to carry out the intent of the bill. The result will be that you will have something that will remove the Bacon-Davis law, and we feel that we will not get any break at all. In fact, I believe that is the intent of the framers of this bill to throw the hooks in to labor.

As simple as the Bacon-Davis law is, with the added force of the Executive order, there are many cases that could be cited here this morning where it has taken many months before final disposition has been made of a protest to the Department of Labor.

I can cite a case now, in Albuquerque, N. Mex., where the Labor Department went in and had to set a wage rate. The men in Albuquerque after many months made an agreement with these contractors that after a certain date wages would be reduced on future possible contracts. The contractor that had the Albuquerque hospital immediately tried to avail himself of that agreement. A protest was made, and he said, "All right; I will leave it up to the Secretary of Labor and signed a paper to that effect and what he determines I will pay." That was on the 17th of March. The Secretary of Labor ruled that the rate previously contracted for must be paid, and money repaid back to the 17th of March. When that word went out, the contractor refused to obey, a subcontractor went broke and could not finish the job due to him taking the contract at such a low figure. Then the bonding company came to the Department of Labor protesting, saying that they should be entitled to that particular reduction agreed to by labor for future contracts and the Secretary of Labor made the ruling that the rate that he decided on was the original contract price and would have to prevail for the future of the contract. I got a telegram on Friday; they have not paid the rate to date.

The CHAIRMAN. Right there, you had the President's Executive order, and every member of the building trades and the different organizations were up here on the day that Secretary Doak came in, and they said, "We do not want any further legislation." But prior to the Executive order you did want legislation. You wanted teeth put into the act.

Mr. MCDONAGH. Right.

The CHAIRMAN. And a penalty.

Mr. MCDONAGH. Right.

The CHAIRMAN. Now, the very thing that you are saying there is proving that the Davis-Bacon bill is not doing what you wanted it to do.

Mr. MCDONAGH. Yes; but——

The CHAIRMAN. And we come in with something to put a penalty in it that will make that contractor pay $10 a day every time he breaks that law, and you say it is no good.

Mr. MCDONAGH. One minute, Mr. Chairman. If you remember, a group of us came down here and opposed the Department of Labor and the Federation of Labor, and I was one of them. I agreed that there ought to be teeth in the bill, but I am opposed to predetermining; and I am still opposed to putting the machinery in the hands of, not the Secretary of Labor—that is not the meaning or the intent of this bill. The intent of the bill is to make it so top-heavy that the Secretary of Labor will have to delegate his authority to some of the contracting officers; they are doing it in some of the departments now. In the Veterans' Bureau they have got a chap going around making wage rates. He went down into Louisiana and made a wage rate for the electrician, and here is how he made it. The plumber was getting 80 cents and the electrician $1.10, and he said he thought it would be a good thing to bring the electrician down to a dollar and bring the plumber up to a dollar, and he made the wages in that way. The Secretary of Labor then overruled him.

The CHAIRMAN. But I mean that everything you say now is proving that the Davis-Bacon law is not working.

Mr. MCDONAGH. Oh, no. The Davis-Bacon law is—how can you expect it to be working? Here we have a big Congress; we have a big political machine, Democrats and Republicans, that has been organized for ages, and it is not working. How, in God's name, can you expect a bill, where the President of the United States issues an Executive order on the 16th of January, and the men who have to obey the law, the contractors, who opposed the Bacon-Davis law, who manipulated this bill through the United States Senate, caught labor, as they say, offguard—how can you expect that to be a successful law until some of these chiseling, chipping contractors are broke? And that is what you are doing. You are breaking them now; and the insurance companies and the bonding companies are coming in here and telling you, "Protect us; protect industry." We had Mr. Kaiser here from Boulder Dam—but that is getting ahead of the story.

If the committee insists on recommending this bill, as a representative of one of the building-trades organizations, and an organization representing over 130,000 organized electrical workers, I respectfully request the committee to give consideration to an amendment which we wish to offer. The amendment is to exempt building trades in this particular bill—the construction of buildings.

The International Brotherhood of Electrical Workers are in favor of the segregation of contracts. We believe that the legitimate, financially responsible electrical contractor should have an opportunity in all contracts to deal directly with the Government and we were opposed by the General Contractors' Association.

And I want to say right here that the general contractors who are sponsoring this bill—and this is a contractor's bill; I do not want the committee to be led astray; Mr. Green has not advocated this bill, nor any other labor group that I know of.

The CHAIRMAN. In order to keep the record clear, he did not advocate the bill originally, but he is in favor of the bill now.

Mr. MCDONAGH. Well, I do not know whether he is or not. He did not see the difference between this and the other.

The CHAIRMAN. I mean, from what he says. Mr. Welch and I talked to Mr. Green, and he said he was in favor of this bill.

Mr. MCDONAGH. Well, here are 130,000 organized electrical workers that are opposed to it.

The CHAIRMAN. Now, wait. I would not say that. Let us be fair about this. In Mr. Ramspeck's district the labor organizations say that they are in favor of it. The returns everywhere from my district are in favor of it. Now, when you say you represent 130,000 electrical workers, you mean you are trying to get the views of those 130,000 electrical workers. But you can not possibly go to those men. They do not know the Metcalf bill; they do not know the Connery bill; they do not know the Davis-Bacon bill, probably.

Mr. MCDONAGH. As I say, I am speaking for 130,000 electrical workers. I received a telegram from Mr. Ramspeck's district, from Mr. Elder, telling me to go and see Mr. Ramspeck, and anything he said with reference to this was O. K. So that ought to convince Mr. Ramspeck as to the position of the electrical workers on that bill. and Mr. Chairman labor in your district is not in opposition to the views of the American Federation of Labor.

Mr. RAMSPECK. Let us get that straight. I have the telegram that I got from down there, and I will put it in the record if necessary. What they said to me was that they asked you to come and discuss your point of view with me.

Mr. MCDONAGH. I think I have the telegram which proves to me that the labor men are in agreement with the position we are taking.

Mr. RAMSPECK. They have never withdrawn their statement to me that they had no objection to predetermination.

Mr. MCDONAGH. I came over to see you at their request. I did not wire them; they wired me.

But when the electrical brotherhood is advocating segregation of contracts and giving the contractors in the electrical industry an opportunity to deal directly with the Government, what do we find? We find the Associated General Contractors, or men representing them, opposing the electrical worker or contractor having a chance to deal directly with the Government; for what reason I do not know.

As I said before, we are sorry to have to oppose something that we believe the majority of this committee are in favor of. We are sorry to see the political tangle into which legislation of this kind has put us. However, we do not believe it would be fair to organized labor or to you if we should let this legislation go by without a protest.

Mention was made by Mr. Kaiser about conditions prevailing at Boulder Dam.

The CHAIRMAN. Mr. McDonagh, just a minute. What do you mean by the "political tangle"?

Mr. MCDONAGH. Here is what I mean, to be up and above board. I mean that the President of the United States signed an Executive order on the 16th of January. A Republican, with a majority in the Senate, goes to work and introduces a bill at the request of the contractor. It shows that the President is on the spot or that the majority of the party is out of harmony; I do not know what it is. I am not here fighting the political angle. But I do not want the committee to be under the impression that we are opposing this bill because we are hooked up politically. I claim that there are as many good Democrats in the labor movement who are sincerely against this as there are Republicans, and I would not want the impression to be conveyed here that the protest of labor is altogether a political protest.

The CHAIRMAN. I am glad you cleared that up, because my impression has been, after being here since December and going along with this hearing, and you say yourself, and Mr. Lane, that you were opposed to it at that time; but I remember, and the committee will remember, the morning when the Secretary came in and announced the Executive order, and then, one after another, the different members of labor organizations stood up and said, "We want no further legislation on this." And then information came to me that the reason they wanted no further legislation on this was because there was a deal on with the Republican administration and with Mr. Jones; and I know and feel that the Democratic members of this committee have been very, very fair on the proposition, and did not bring in a bill, because they believed that it might be harmful to labor, from what we had heard here. And I want it to go into the record that I think that this entire committee, every member of

this committee, has tried to keep any partisan side out of the question entirely.

Mr. McDONAGH. I hope so. For your information, Mr. Chairman, I am recorded against the Executive order without teeth, and you must remember that other organizations were so recorded.

The CHAIRMAN. I am sure I speak for both sides of the table. I do not think that the membership of this committee considered the political side of it for one instant, because we know what happened. If the Democratic side had been playing politics, immediately they would have put through a bill and said, "This is the Republican administration." But they did not. The Republican side did not bring it up at all, Mr. Welch, or any of the members, and this committee has gone on an entirely nonpartisan proposition with reference to this matter.

Mr. McDONAGH. I am glad you did, and I would like to see that in the record, and I would like to see it brought out here.

In that bill we were dealing with the Secretary of Labor, at that particular time. We told the Secretary of Labor that we were coming down here to oppose the bill unless you put teeth in it. We came down here; we were in a minority; and we just registered a protest and faded out of the picture. We wanted to let the majority rule. But, Mr. Chairman, we did not quit, if you remember, you told us that if the bill went to House predetermination would be written in, and we went along.

Mr. WELCH. What bill do you refer to, Mr. McDonagh?

Mr. McDONAGH. I mean the amendment, when the executive order of the 16th of January was put into the Bacon-Davis bill, when the President issued the Executive order on the 16th of January. We were advocating then, and I think prior to that, as an organization, that there should be a penalty clause in the Bacon-Davis bill to penalize these so-called job-peddling, irresponsible contractors, and we came down here with the intent of opposing it, and Mr. Lane, the carpenters, and myself recorded our protest. We were satisfied to go along with the Executive order, which we had to do. We thought it might improve the bill, and it has improved it in some cases, because they have authority to take the contracts away, and in some places they have taken the contracts away. And as soon as they take the contracts away, what do we find? We find all these bonding companies squealing like pigs. Why? Because they have set up straw contractors and if he gets a bond, and is sitting politically secure and "in the know" in the department, he gets the contract. In several places he has lost out; the bonding companies have lost out, and they are coming in here yelling for relief because their little game has failed and they must pay the price. Well, labor never yelled for relief until it was an absolute disgrace on Long Island and other places. After the Northport job, when they built a stockade around the Government work in the residential community, pretty nearly ruining Mr. Bacon's nice rural section down there on Long Island, labor then asked for this. I do not think labor, if conditions were a little bit better, would want the Government to predetermine, or would want the Government to establish a prevailing rate of wage. We figure that the labor movement in this country would be big enough and able enough, if conditions were a little bit better, to establish their own conditions.

Mr. WELCH. What gives you the impression that partisanship has entered into our deliberations?

Mr. McDONAGH. Here is what gives me that impression. The President on the 16th of January issued an Executive order. From the time that Executive order was issued up to the present time there have been rumors of a change. Predetermination has been argued. Everybody has been talking about predetermination. The bill goes through the Senate. Labor was not represented, to make a general protest. Some of our fellows never took it seriously, and never thought there would be any Republican majority that would pass a piece of legislation in the face of what the President of the United States did. And I am going to tell you that, as a piece of political strategy, he has got them on the spot, because he can go before the country and say that he has helped to establish the wages of the people of the country, and cite the Executive order.

Now comes a Republican majority of the Senate and puts a bill over to predetermine wages, taking all the credit—and I am a Democrat; I am not talking as a politician—taking all the credit from the President for stabilizing wages; and over in the House is a Democrat majority, and they are taking it up and putting predetermination in when they know that labor don't want it. I don't know; I may be mistaken. I may be unduly suspicious; but——

Mr. WELCH. Nobody has accused the chairman of our committee, whom we all respect, regardless of whether we are Democrats or Republicans, of having anything in common with the Republican administration.

Mr. McDONAGH. I do not think he has.

Mr. WELCH. But, regardless of that, our distinguished chairman read into the record, in an open session of Congress, the President's Executive order.

Mr. McDONAGH. Yes.

Mr. WELCH. And he did not do that for the purpose of partisan politics, or partisanship. He did it because he thought it was a step in the right direction, whether it came from a Republican President or a Democratic President. It was not the cause: it was the effect. We thought at the time, all of us, that in the absence of legislation which would perfect the so-called Davis-Bacon bill, as reported out of this committee during the time that I was the chairman, that an amendment to it might be disastrous; that it might give those that were opposed to the principles involved in the bill a chance to go to the higher courts and destroy that which had been laboriously accomplished by the advocates of it, by this committee and by the Congress itself. So, Mr. Connery, a sincere friend of labor, had no partisan thought when he read into the record the President's message. He felt that it was a step in the right direction, regardless of the source from which it came.

Mr. McDONAGH. Get me right. I am not putting the Democrats on the spot any more than I am a United States Senator who is a Republican; and there might be some pretty cheap politics behind that to bring that particular bill out. So as far as partisanship goes, you can not accuse me of that.

Mr. WELCH. I do not see any room for partisanship here at all. I have been told that Senator La Follette, who has always been regarded as a sincere friend of the toiling masses, as was his father,

is a member of the committee that passed this bill out, and that section 2 of the bill was his handiwork. His foresight and vision prompted section 2 of the bill, which will protect that which we have accomplished against attacks in the higher courts.

Mr. McDONAGH. He amended the bill in this section right here [indicating], so that in case this bill passed, labor would not be hanging in the air.

The CHAIRMAN. That is right.

Mr. WELCH. That is section 2?

Mr. McDONAGH. That is section 2. That is the La Follette amendment.

The CHAIRMAN. In case this bill should be declared unconstitutional, the Davis-Bacon bill would not be affected.

Mr. McDONAGH. What is going to happen in case this bill is declared unconstitutional? What is labor going to do? Is the Davis-Bacon bill going to hold in case this passes, or is this predetermining bill going to take the place of the Davis-Bacon bill?

Mr. WELCH. The Davis-Bacon bill is intact as far as this bill is concerned. This does not repeal any of its provisions.

The CHAIRMAN. It amends it; that is all.

Mr. McDONAGH. But in this particular bill they stress the Secretary of Labor. Everybody tells about what the Secretary of Labor is going to do, and you have got an economy wave in the House, and you have taken money from his appropriations. You are going to give him a thousand per cent more work if this thing carries, and you are not going to give him the finances or the machinery to do it. How in the dickens is labor going to get a break? I say, if you want to do anything, let the Bacon-Davis bill alone for a year.

Mr. WELCH. The President of the American Federation of Labor, whom we all respect, and whom the whole country respects, for that matter, regardless of whether they agree with him or not—they respect his honesty and integrity; and nobody has ever questioned that—said to Mr. Connery and myself, in the presence of two or three representatives of your group, that predetermination, or the determination before or after, matters but very little; that it was the work of organized labor to see to it that the principles of collective bargaining and a fair wage are maintained, and that is as far as the American Federation of Labor is concerned.

Mr. McDONAGH. I said something with reference to Mr. Green. I respect him as highly as any man here; but Mr. Green has not had the practical experience of trying to see this Bacon-Davis bill carried out, and the Executive order of the President carried out, like four or five of our fellows who are sitting around here that have been after the departments to carry out the law. We are afraid that if you monkey with it now you are going to muddy the water, and that whatever benefits we have gotten out of the Executive order are going to be nullified in fact if you pass this bill and it is signed I can see that you are helping to build a machine, that may be more harmful to labor than you think.

The people that are advocating this bill are not labor men, but contractors and the bonding companies who have set up a lot of straw contractors. They are getting it on the chin, as the saying goes, and are asking Congress to save them from a system they are responsible for—the irresponsible contractor.

I saw a letter in a Congressman's office from a concern in New York asking him to vote in favor of this bill to protect the bonding companies of the United States.

So that labor is not asking for it; you are trying to hook Mr. Green up with this bill.

The CHAIRMAN. No; we are not trying to hook him up with this bill. Mr. Welch and I put our cards on the table. We told Mr. Green what was said here. We told him what happened on the day the President came out with his Executive order, and I do not think the Executive order has done any good.

Mr. McDONAGH. Yes; it has.

The CHAIRMAN. From all the reports I get, on buildings here in Washington, right under our noses, it has done no good; there are men working for 25 cents an hour, and in West Virginia the same condition prevails, where Senator Hatfield had some of them indicted; but there is no penalty clause.

Mr. McDONAGH. They can take away the contract.

The CHAIRMAN. But they have not taken away any contract, have they?

Mr. McDONAGH. Yes; they took a contract away from a man in Shreveport, and they notified the bondsman that they would finish it.

The CHAIRMAN. We told Mr. Green the whole story. Mr. Welch, the ranking member of the committee, and the chairman talked to him. There was no partisan issues involved.

Mr. WELCH. Mr. McDonagh, you know the status of this bill when it came from the Senate, do you not?

Mr. McDONAGH. Yes.

Mr. WELCH. You know it was left on the Speaker's desk.

Mr. McDONAGH. I understand that; that is what I am trying to bring out. I am not accusing you men.

Mr. WELCH. You should know that whatever amendments are made to this bill, whatever happens to the bill, is by reason of the fact that it is now before the Committee on Labor. Were it not for the efforts of the chairman of the committee, with what little help I was able to give him——

The CHAIRMAN (interposing). It was a whole lot of help.

Mr. WELCH (continuing). That bill would have been passed and signed by the President.

Mr. McDONAGH. That is what I am pointing out, that the bill would not have come here, but it would have been put over, without labor even having a voice. I say that is political manipulation and contractors politics.

The CHAIRMAN. But do not forget, when you speak about it being put over, there was a hearing in the Senate.

Mr. McDONAGH. No one was notified that I know of, at least none of the tradesmen who have been on the job trying to make a better condition on Government work.

The CHAIRMAN. They were notified as much as they are notified about any other committee hearing. The hearings are published; it is announced in the Congressional Record when the committees are to have hearings. It is labor's job of course, to know what is going on, when there is to be a public hearing by a committee. You had your chance in that committee. This bill passed unanimously in the United States Senate.

Mr. McDONAGH. I know they are stressing that. Then they come in here and stress what labor did in Rhode Island, and the newspapers carried stories with big headlines about the building-trades department indorsing Mr. Metcalf. But he was not elected as a delegate to the convention. You are not kidding labor; the rank and file of labor are wide awake to-day, and if this bill passes it will help make the Federal construction program muddy. It will make a pretty disgraceful situation.

Mr. RAMSPECK. You make the statement that this bill was in the interest of the contractors and the bondsmen.

Mr. McDONAGH. Yes.

Mr. RAMSPECK. Granting, for the sake of the argument, that it does not hurt labor, do you not think it is the duty of Congress to protect the bondsmen and the contractors also?

Mr. McDONAGH. I think it is the duty of Congress to protect every citizen of the United States. I do think that when we have a Committee on Labor at least we ought to expect to find that committee fighting along with labor; it does not seem so in this case.

Mr. RAMSPECK. Let me ask you this further question. If the committee sincerely believes that this bill will not hurt labor, and will help contractors out of the difficulty they say they are in, and the bondsmen, it would be our duty to favor them, would it not?

Mr. McDONAGH. Yes; but before you get that way, I believe a more careful study ought to be made, and not rush legislation like this through especially at this time.

Mr. RAMSPECK. I want to call your attention, Mr. McDonagh, to the position you are putting the Democratic members of this committee in by your argument.

As the chairman has said, there has been no politics in this committee either now or under the administration of Mr. Welch and Mr. Kopp. There has been no politics in it.

I was on the subcommittee that worked on this when it first came before the committee, and we attempted to go further than the Bacon-Davis bill, but in order to get some legislation we voted for the Davis-Bacon bill solidly, for the bill drafted by the Republican Secretary of Labor, and we passed it at your request.

Here are the political aspects, and as far as I am concerned, I am not considering that, but I wanted it pointed out for the record.

A Republican Senate adopts this bill. It puts the Republican Party in the position of being able to say to the contractors and bondsmen, "We took care of you, when a Democratic committee in the House would not give you any legislation at all."

The CHAIRMAN. That is what I told Mr. Green, and that is the reason we introduced the Connery bill, feeling we had gone as far as we could go.

Mr. McDONAGH. It is a rather unfortunate thing that we have to do what we are doing this morning. We would like to be a good fellow, we would like to go 100 per cent with the committee. I say, you are trying to do something. But I say you are trying to do something that labor does not want and does not ask for.

The CHAIRMAN. We may disagree with you on that. But I know from your dealings with the committee that no one is going to take any offense at anything you say.

Mr. McDONAGH. I hope you will not take offense at anything I may say.

The CHAIRMAN. I am not worrying about going back to my district as the author of the bill to set up the prevailing rate of wages.

Mr. McDONAGH. But labor is not asking for this bill now.

Mr. RAMSPECK. Some parts of labor are.

Mr. WELCH. Labor in some States has indorsed it.

Mr. McDONAGH. Yes; they did indorse it in Rhode Island. I pointed that out.

Mr. JACOBSEN. I would like to hear your statement again in reference to Boulder Dam.

Mr. McDONAGH. I said:

> Mention was made of the bad condition prevailing at Boulder Dam. No doubt you know that a Member of the United States Senate has requested that an investigation be made in reference to the conditions under which labor has to work at Boulder Dam.

That is a matter of record over there.

> But I bring this to your attention, and it is a matter of record in the proceedings of the American Federation of Labor at Vancouver, British Columbia, demanding a thorough investigation of conditions at Boulder Dam by the United States Government.

Mr. Kaiser came here the other day and told you what ideal conditions prevailed there.

With your permission, I would like to submit for the record a brief, and a few quotations, and also a copy of the letter gotten out by the rating bureau of 180 Broadway, New York.

The CHAIRMAN. What are the clippings?

Mr. McDONAGH. One is a clipping called "Boulder Dam Whitewash." It contains comments by Edmund Wilson, Victor Castle, and J. H. Cochran.

The CHAIRMAN. If there is no objection——

Mr. McDONAGH. These all deal with the investigation of Boulder Dam that we have asked for. I think this ought to be in the record because of the position Mr. Kaiser took.

The CHAIRMAN. Unless there is objection, that may be inserted.

(The statement referred to is as follows:)

(The brief submitted by Mr. McDonagh is as follows:)

STATEMENT BY JOSEPH S. McDONAGH, LEGISLATIVE REPRESENTATIVE, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, IN REGARD TO H. R. 11865 AND S. 3847, AMENDMENT TO THE PREVAILING RATE OF WAGE LAW

The present prevailing rate of wage law was drawn and passed in order to set up wage standards. It appeared to its authors, and apparently to the majority in Congress, that the government of a great nation should not be a party in any movement to debase the standard of living particularly at a time when there was widespread suffering among workers and their families. Before the passage of the prevailing rate of wage law, Representative Bacon said:

"We have the condition to-day on many Federal construction projects, where the terms 'local labor' and 'prevailing rates of wages' mean absolutely nothing; where local workmen are merely envious onlookers, off the reservation, simply because the Federal contractor concerned has been able to bring into the local community a cheap, itinerant labor supply or severely cuts the wages normally paid to the workmen in the community. He does this with profit to himself and perhaps also, I am ashamed to say, with profit to the Federal Government. We have instances where contractors are dumping this cheap labor into an already demorazlized labor market at the expense wholly of the local workman, his family, and his community."

Nine months later, after the enactment of the law, Representative Bacon reported to the House Committee on Labor the following:

"I have been studying this law all summer and find that very few contractors have tried to evade it. A large majority of them, I should think 90 per cent, have earnestly tried to live up to it, but a few have deliberately tried to evade it. Also, I will say that I do not believe that any reputable contractor will have any objection to the provisions of this Executive order. If it is attacked at all it will be attacked by some contractors who have been known as bid peddlers."

It is our position that this pretty accurately describes the conditions before and after the passage of the prevailing rate of wage law. It is our contention—

(1) That the conditions, the abuses and violations described by partisans of the new Metcalf bill have been grossly exaggerated.

(2) That the new law is likely to fasten upon the workers—permanently—practices that will be just as injurious to them as the barbarous conditions which existed before the passage of the Davis-Bacon bill.

(3) That the proposed amendment is immensely complicated, ineffective, and has the power in it to do the very opposite from what a prevailing rate of wage law is intended to do, namely, to give a fair day's pay for a fair day's work.

(4) Finally, that the conditions complained of are not the real problem, and that the real evils in the industry can not be cured by the amendment.

1. The present prevailing rate of wage law is distinguished by simplicity. It states a practice. It provides a method of enforcement.

The method of the partisans of the new Metcalf measure has been to take a few isolated violations and to present these as if they were typical of the usual and the routine. Take, for instance, the Detroit case cited by Colonel Walbridge on March 17, 1932, before the Senate Committee on Labor. There is no evidence from Colonel Walbridge's statement that he or any member of his staff went to the Secretary of Labor to discuss the prevailing rate of wage in Detroit. What did they do? They accepted as final the statement made by a representative of the Treasury Department. All the trouble Colonel Walbridge complains of could have been prevented by the simple expedient of obeying the law, namely, going to the Secretary of Labor.

Recently the organization Colonel Walbridge represents broadcast over the country another "exception," a case obtaining in a small village in Oklahoma. In that case, the contractor went into the town and asked the mayor what the prevailing rate of wage was, and accepted the mayor's findings, and then complained bitterly when the Secretary of Labor refused to support the mayor's low-wage scale. Here again the trouble could have been avoided by following the course suggested by the law.

The truth is the Associated General Contractors have never believed in the Davis-Bacon law. They opposed it before passage, and they have yet to present evidence that they have done all that law-abiding citizens should do to see that it was a success.

2. The purpose of the prevailing rate of wage law, we take it, is obviously to put Federal construction in step with local conditions. It was not intended to put the Federal Government in the center of the construction picture. This, the new bill would do. It is strange that business men, who usually decry the entrance of government into the offices of business, would go before Congress and advocate such a proposal. Under the mechanism of the Metcalf amendment the determining voice in the fixing of wage rates—up or down—is the Comptroller of the Treasury. Under this amendment, should the Secretary of Labor declare that conditions warranted a wage increase, a wage increase would not be forthcoming unless the Treasury Department handed over to the contractor "an amount equal to that amount." This would mean setting new machinery in motion, it would need new authorizations, new congressional appropriations, until the whole wage issue would be lost in a maze of bickering. Such a cumbersome mechanism creates conditions for lawsuits—and even, in one instance, provides "a debt in suit at law" be looked forward to as an inevitable part of its complexity.

We submit to the unprejudiced minds of this committee that setting up complex machinery was never the intent of the original law. The original law is simple.

It is conceivable that the Metcalf amendment, when it became a law, could be used by an unfriendly government to head off strikes against unfair conditions, on the grounds that such a legal weapon as the strike was in this particular instance a strike against public interest. If this appears far-fetched, we have only to recall to this committee that provisions of railroad law have been so invoked.

In short, the Metcalf bill does the following things actually, or by implication:

(1) Exonerates construction management from the duties of management mainly to plan intelligently so as to meet the ordinary difficulties of the job.

(2) Places labor in the position of collecting any deserved wage increase from the Government itself, or forces labor to wait for increases until money for that increase passes through the usual long process of appropriation, or puts labor in position of striking against the Treasury Department.

3. The framers of the present law were wise in that they conceived the Secretary of Labor as the arbiter in wage disputes. The Secretary of Labor is in the best position to know what wage rates are fair in the light of all facts, and yet in the proposed new bill the justice or injustice of the wage rate, fixed by the Secretary of Labor, is not the determining factor, but the mere pecuniary fact, as to whether the Treasury Department is in pocket at that particular time. In short the whole machinery of the Bacon-Davis bill is scrapped and a new set-up substituted.

4. We agree with the General Contractors of America upon one condition, namely, that contractors now bidding upon public works are not playing fair. They are—to use common language—cutting each others' throats. This slaughter is generally accomplished by cutting labor costs far below the prevailing rate, in bids, and then trusting to a chain of circumstances to pull them out of the hole in case they are awarded the contract. This raw hiding, this cutthroat competition, is the real evil of the situation, but the Metcalf amendment will not stop it or even modify it. This essential evil ofwhich labor is the chief victim can be remedied very easily. Let Congress clarify the meaning of the phrase "lowest responsible bidder." Federal law and the laws of 48 States agree that all contracts for public works, supplies, and equipment shall be awarded to the lowest responsible bidder. In practice the phrase "lowest responsible bidder" comes down to only the lowest bidder. The lowest bidder is often the most irresponsible bidder. To clarify this point further, I quote from Construction Digest, an employer's magazine, in the construction field:

"In our opinion a responsible bidder is one whose estimates are always intelligent and justified by experience, who has sufficient capital to carry on any contract he might be awarded and whose reputation for work well done has been established over a period of years, either as a contractor or as superintendent for another contractor.

"It is time that those charged with the prosecution of public construction write a new definition of the word 'responsible' for the courts to pass on.

"As a starter let them assume that no matter how much capital a contractor may have in his business, he is not responsible, if a breakdown of his bid reveals unit costs that neither he nor anyone else can justify in the light of experience or architectural or engineering knowledge.

"Even though the practice of awarding contracts to lowest bidders may save money for the taxpayers, were continued, it tends to bring about unsound conditions in the construction and construction materials industry.

"Price cutters are wage cutters and force others to become wage cutters.

"Price cutters make no profit and prevent others from making profits.

"Labor and business must both enjoy a profit. Denied this legitimate return, the community and State in which they live and do business, eventually will pay the penalty of having nourished an irresponsible citizenry.

"A monument in fame's hall awaits that public official who will write a new definition of the word 'responsible' that will be adopted in all courts in all commonwealths."

We contend that the Metcalf bill only muddies the waters. We contend that it will give rise to more evils than it corrects. We ask your committee to stand by the present law, which, though not perfect, accomplishes its purposes in the majority of cases, is simple and understandable, and above all else is sincere in its regard for the workers involved.

JOSEPH S. MCDONAGH,
Legislative Representative.

APRIL 26, 1932.

[The Journal of Electrical Workers and Operators, February, 1932]

BOULDER DAM "WHITEWASH" IGNORES CRITICISM—EXPENSIVE REPORT OF GENERAL CONTRACTORS AND ENGINEERS FAILS TO TOUCH SPECIFICALLY THE GRAVE CHARGES MADE AGAINST SIX COMPANIES (INC.)

The "committee of experts," appointed by the Associated General Contractors and the American Engineering Council, has spoken. In a 77-page, mock-leather-bound booklet the "experts," sent to visit Boulder Dam, came back with such jewels of rhetoric as:

"There are many ways in which civilized man has expressed his divine endowments. * * *

"Manking has builded before in the desert and he has made war against one of Nature's greatest powers—the force of moving waters. * * *

"But this project is more than a struggle against embattled materials. * * *

"Throughout the whole enterprise here was a purpose and a meaning." * * *

The foregoing are typical of the grandiose, high-sounding publicity attached to this report of "experts." No specific evils are cited. And the specific charges brought against the management of the project are never met. The charges stand as gathered by trained observers during the early months of the construction. The high-sounding rhetoric, the expensive, mock-leather-bound report, the photographs, and the bologny, can not make citizens forget the real facts. Here they are:

[The Transformer, published by L. U., No. 18, I. B. E. W., May 20, 1931]

"Eleven men were injured, two possibly fatally, when a terrible blast of dynamite was set off without warning. * * * The blast sent tons of rock down on men working several hundred yards below. * * * Feeling ran high at the camp of the Six Companies (Inc.) when members of the injured crew charged that the crew responsible for the blast was composed chiefly of foreigners."

[J. H. Cochran, The Electrical Workers Journal, September, 1931]

"The highest mortality for one day in the way of accidents came from the explosion of a delayed round of shots in the cavity. The first round went off. After waiting a while the men were ordered in and got the full benefit of the blast. [Result, 11 deaths.]

"Other accidents occurred when the men were lowered for drilling holes with their jacks. Lowered into position in some cases the rope broke or in others it was surmised the men were overcome by the heat. You can take your choice."

[Edmund Wilson, The New Republic, September 2, 1931]

"There is no question that the Six Companies have actually violated the safety laws of the State of Nevada under the pretext that they do not apply on a Government reservation. They have, for example, been sending men back into the tunnels 15 or 20 minutes after the blast when the customary time allowed to let the nitroglycerine fumes evaporate is about an hour. The laws require ventilation in tunnels, safety men at the headings and change rooms where it is possible for the men to dry themselves before going out into the air, and none of these the company have supplied."

[C. F. Grow, official representative of the International Association of Machinists, the Iowa Unionist and Public Forum, July 31, 1931]

"Trucks are used to take the workers from Boulder City to the dam site, which is about 8 miles distant; the men in many instances stand up closely packed together, while riding and being jolted, under the burning sun. A number of these trucks have turned over while going over the rough roads; it is only the strongest men that can keep up this pace, and not for long."

[Victor Castle, the Nation, August 26, 1931]

"The room [assigned to him as a part of his pay] consists of a cot with filthy blankets placed in a tent with three other cots. The tent is utterly unprotected by any shade, mercilessly exposed to the sun and without any double roof. I tried to sleep * * * but it was simply impossible—the tent was unbearable."

[Edmund Wilson, referred to above]

"The buildings [which eventually replaced the tents] are crude dormitories like army barracks, where the men sleep close together and where the disinfectant used in the water closets pervades the atmosphere.

"The water of the Colorado River, full of silt from the decomposing tufa, is an opaque yellow like coffee with too much cream. The men had to drink and wash in this water, which was nearly always tepid and which sometimes got so hot in the tanks that it was impossible to shave with it. The effect was sickening. * * *

"The camp was infected with some kind of wild mice which jump up onto the beds with incredible agility and crawl all over the men; they got so that they brushed them away in their sleep like flies. For the shift that had to get its rest during the daytime with the sun glaring in through the windows and heating the shack like an oven, sleep was at best a heavy, sweating stupefaction. When they got up they would find their drills so hot that they couldn't handle them until they had cooled them."

[Victor Castle, already mentioned]

"This ['Rag City,' a camp village near Boulder Dam] is the refuge of men with families who have come seeking employment. There is not a green thing in sight. Here are probably some three or four hundred families living in tents rigged up out of every known kind of wood, rag, and tin from cans. * * * Las Vegas water is sold [here] at 15 cents for 2 gallons or 5 gallons for a quarter. Local enterprise has dug a hole in the ground something like a block from the river, where the Colorado seeps through. Here is where those who don't (and most of them can't) buy Las Vegas water dip their supply from. The water is almost the color and texture of rich cocoa. 'Rag City' boasts no sanitary facilities, other than two old-fashioned outhouses which are patronized by everybody."

[C. M. Feider, official investigator for I. B. E. W., Electrical Workers' Journal, May, 1931]

"My latest interview with the chief of police of Las Vegas revealed that the police department is shipping out of town to the State line, a distance of some 30 miles, by motor trucks and otherwise, from 100 to 200 unemployed each week; that the pool halls and gambling places are permitting the unemployed to lounge around in their places at night to keep out of the weather. The highways going into Las Vegas are fairly well covered with idle men going and returning * * * in the hope of picking up something to do."

[Wooster Taylor, Washington Herald, June 10, 1931]

"Twenty-five speakeasies in Las Vegas alone were raided.

"The townspeople smile and point to fresh-worn paths around to the back doors of places 'closed tight' by the raiders. One considerate proprietor has boldly built a boardwalk to the rear of his establishment.

"The famous raid is regarded here as a political gesture. * * * The 'noble experiment' of prohibition sits none too lightly on the shirt-sleeved populace. They like their likker raw and their women companionable, and they don't care who knows it."

[Rev. Dr. Worth M. Tippy, Information Service, Federal Council of the Churches of Christ in America, October 17, 1931]

"As yet no arrangements have been made at Boulder City for schools. A census revealed 102 children of school age at Boulder City the 1st of September."

[The New Leader, August, 1931]

"Lunches are put up in paper sacks or tin boxes and carried out to the workers. Because of the heat and the poor quality of the food, these lunches quickly decompose and become putrid. There have been hundreds of cases of dysentery and other diseases."

[Victor Castle, mentioned above]

"While I was there [at the mess house of construction camp B] two men were brought in who had passed out completely. One, a commissary clerk, collapsed in his tent after he had finished work and had convulsions. There was no doctor. Buckets of ice water were thrown on him. This was the only medical service he got, and we, the workers, gave it to him. He was taken into town later in a

machine owned by a worker; we don't know whether he lived or not. From his condition I doubt it. The other man went under on the job. We threw more ice water on him. It was the only thing we knew to do, and the only thing we could do without medical advice or aid. * * *

"I am told that down at the dam site there is no medical or surgical help available, no hospital facilities, no first aid equipment, no stretchers, no ambulances, nothing to protect the lives of the workers.

"So I quit. I would rather mooch on the main stem than work in a temperature around 140 for $2 a day, and my meals, and then have to pay $1.50 a month for insurance—particularly when the insurance companies specifically exempt the greatest element of danger, heat prostration."

NOTE.—Thirteen of the first 26 deaths at the dam were the result of prostration.

[C. M. Feider, investigator for I. B. E. W., official report for International Vice President H. P. Brigaerts, August 19, 1931, later forwarded to Wm. Green, president of the American Federation of Labor]

"I want to relate the experience of a member of the I. B. E. W. who is considered to be one of the most efficient electrical workers on the Hoover Dam project and who has personally complained to me: That the trucks of the Six Companies would pick him up at 6.15 a. m. in the bunk house; go to the warehouse, load material and arrive on the job at 7.30 a. m. at which time the day's work would start. After having worked eight hours, the delivery of the men to their respective bunk-houses would take enough time to make 11 hours from bunkhouse to bunkhouse, for which he received the munificent sum of $6 for the actual eight hours on the job, with $1.60 taken out for subsistence and hospital fee. This same man as a result of overwork and heat, became unconscious on July 30, at which time Mr. Midau, foreman in charge, revived him by pouring water on him, and then discharged him on the following Saturday despite the fact that he was the oldest man in point of service on the job."

[The New Leader, August, 1931.]

"They are charged $2 a day for such miserable board and lodging as they get, 10 cents per day for hospital, and a poll tax of $5 if they work 10 days. Pay is mostly in scrip so that the men must purchase their needs at a company store which charges exorbitant prices. No opposition stores are permitted at the dam site."

[C. F. Grow, official investigator for the International Association of Machinists, quoted above.]

"The Six Companies have just notified the men that hereafter they will pay them only once a month; they had been paid twice a month up to now; this will entail a great hardship on these workers, as most of them are broke when coming to work, and others go broke on the job."

[Judson King, The New Republic, June 24, 1931.]

"In all departments skilled labor is paid on an average of $2 per day lower than the scale for similar work now paid in the Southwest. Linemen work for 75 cents per hour, and as many helpers as possible are forced in to do journeyman work."

[C. M. Feider, investigator for I. B. E. W., official report to International Secretary G. M. Bugniazet, April 4, 1931.]

"Mr. Crowe [general superintendent of construction for the Six Companies, Inc.], who is generally referred to as 'Hurry Up Crowe,' apparently feels the importance of his position and gave me just one minute in which to state my case. * * * He specifically declined to arrange for an interview between a committee representing organized labor and himself on the grounds that the company had nothing to discuss and that so far as giving any employment to our people there was no possible hope. * * * Mr. Lawler [general manager for Six Companies] also stated that he could not see where we could accomplish anything by further conferences, reiterating Mr. Crowe's statement that they had to take care of their own former employees and in addition that they had to satisfy Senators, Congressmen, and others who were making demands on them to place their friends and constituents on the job. * * *

"While interviewing Mr. Crowe, in response to a question by me whether he intended to continue the low wages now paid, he replied by saying: 'Hell, we have no wage scale.' * * *

"Every activity on the ground in the vicinity of the Boulder Dam project indicates that advantage is being taken of the depression on the surplus number of men begging for work."

[Central Trades Council of Las Vegas, Nev., telegraphic protest to American Federation of Labor on August 11, 1931, forwarded to Secretary of Labor Doak]

"A condition of unrest and resentment has been created thereby [low wages] among the workers. Although the Six Companies raised the pay of laborers recently from $3.50 to $4 a day, that was only because of a Nevada State minimum wage law which says they can not pay less. The standards of the workers are being rapidly and unreasonably lowered on a project over which our Government has supervision. * * *

"We feel that it is a crime against humanity to ask men to work in that hell hole of heat at Boulder Dam for a mere pittance, just enough to keep their bellies full and clothes on their backs. If labor conditions at Boulder Dam are permitted to go on as they are, we believe it is going to affect labor like a cancer."

[William S. Wattis, president of the Six Companies (Inc.), in a newspaper interview, the Union Labor News, August 18, 1931]

"We will not discuss the matter with them [the workers]. They will work under our conditions or they will not work at all."

[Frank T. Crowe, superintendent of the Six Companies (Inc.), Washington Post, August 10, 1931]

"We are six months ahead of schedule on the work now, and we can afford to refuse concessions."

[The workers had just presented a demand for better wages, safety measures, and more sanitary and healthy living conditions. They were met with a complete lockout over the entire project.]

[Edmund Wilson, The New Republic, September 2, 1931]

"The men met the representatives of the companies Sunday morning and when they stated their demands * * * they were told to pack up their things and get out.

"In the meantime, the companies had sent trucks and men with sawed-off shotguns to drive the strikers out of the river camp. * * * The sawed-off shotguns and tear-gas guns were taken away (by a United States marshal) from the companies who were making all preparations to fight the strikers with the conventional terroristic methods. Dynamite was found on two mysterious men who tried to enter the reservation as prospectors. * * *

"On Tuesday night it became known that the Government was going to put them off the reservation the next morning. * * *

"They assent and climb into the trucks and are removed to a place on the desert halfway between Boulder City and Las Vegas, where the strikers have gotten permission to camp.

"By this time it is pouring rain and it makes the Government drivers feel uncomfortable. They say they are sorry to have to move the boys in the rain."

C. M. Feider, I. B. E. W. representative, official report to International Vice President H. P. Brigaerts, August 19, 1931]

"Rather than discuss the situation with their employees and deal with them collectively, the Six Companies ruthlessly dumped 1,400 men and their families on the small town of Las Vegas in a desert, where the men and women were compelled to sleep in the open desert on what the workers aptly called the Hoover blankets, meaning discarded newspapers and gunnysacks. * * *

"The strike has been called off; most of the men who were locked out are being reemployed, but the fear of God, hunger, and distress have been put into their hearts and they have been taught the lesson that if anyone or any group of the employees dare utter their resentment or complain against conditions, immediately they will be dumped on the desert."

Mr. RAMSPECK. There is only condition involved. We all know that conditions are not what they ought to be in Boulder Dam, and in many places, and we are as anxious as you are to remedy them.

There is only one question in my mind, and I can only speak for myself.

If the representatives of labor, including yourself, can give me any good reason why predetermination is not just as much in the interest of labor as after-determination, I am willing to go along with you. But if you can not give me a reason, I can not, in justice, deny the

contractors and the other people in Government work their right to protection also.

As far as I am personally concerned, I am willing to give preference to labor; and I am willing to take the penalty that may be exacted therefor; but I can not do it unless you give me some reason, based on logic, why predetermination would be hurtful to you.

Mr. MACDONAGH. Do you want a practical reason?

Mr. RAMSPECK. Yes; lay all your cards on the table.

Mr. MCDONAGH. We have the Davis-Bacon law on the statute books now. Many contracts that have been let under the Bacon-Davis Act we do not have to bother with because we do not need to. The contractors have a standing, both trade and financial.

There is no protest on that job; there are many contracts that have been let under the Bacon-Davis law that we never have to protest against.

Some contractors, however, have behaved rather badly on Government work, and we have protested. The Labor Department sends a conciliator out to make adjustments.

After an agreement is made we do not have any protest. They do not have to establish a wage condition; the conciliator may be able to bring about a condition where there is no record of wages or anything else. With a predetermination provision in every contract the Government would let you have some official establishing a wage rate.

Who would establish it? You do not think the men advocating this bill are coming in with clean hands altogether by putting it up to the Secretary of Labor, when he has hardly machinery enough now.

Mr. RAMSPECK (interposing): Right there, let me ask you this question. Before any contract could be let, if this proposed bill should become a law, the determination would have to be made.

Mr. MCDONAGH. How are you going to do it; where is the machinery?

Mr. RAMSPECK. It does not make any difference about that. A contract could not be let and the work could not be started until the wage scale had been determined.

Mr. MCDONAGH. In one of the pamphlets, of the Senate hearings, it is stated that at Shreveport the contractor could not meet the conditions, so he subcontracted his work to an irresponsible contractor.

There is a man a general contractor who got a contract from the Government. He knew the prices he figured would not stand up, that he would not be able to pay wages, but I believe he thought that he would be able to get away, and he would if organizer had not been on the job and protested it to the Department of Labor. "You have to live up to the prevailing rate of wages law," was the Secretary of Labor's decision, and the general then sublet to one of the irresponsible contractors.

He said in a letter to a representative of the Associated General Contractors, "What did I do? I went out and subcontracted my work to an irresponsible contractor." The general contractor got the contract and he got it so low he could not make any money, and he gives it to another scout who was irresponsible but a contractor who thought he might be able to violate the law and get away with it because he had a bondsman behind him.

Mr. RAMSPECK. If the wages were set in advance, and the bonding company knew what the contractor was going to have to pay, a responsible bonding company would not bond a contractor who was not in a position to pay.

Mr. MCDONAGH. A lot of them are not doing it now.

Mr. RAMSPECK. Because of the President's order, they are not doing it?

Mr. MCDONAGH. I think if you let the law alone for six or eight months there will be a different relationship, and we would be better able to come here and ask for needed legislation; we would be in a better position to say that such and such is needed.

Mr. RAMSPECK. My judgment is, if you let it alone, they will take it into court, and have the Bacon-Davis bill thrown out, and my judgment is that the Executive order is not worth the paper it is written on.

Mr. MCDONAGH. The people who sign these contracts sign a contract to perform as per specifications they have already contracted to live up to the law.

Mr. RAMSPECK. That is what this bill does.

Mr. MCDONAGH. That bill might be all right theoretically, but practically I think it is going to do more harm than you expect. It will break down what little machinery we have for settling disputes at present.

Mr. WELCH. Many contractors who favor this predetermination bill and were in favor of a predetermination clause in the Davis-Bacon bill are men who have never had trouble with their employees.

Mr. MCDONAGH. None of them testified here. Mr. Walbridge testified, and he said that in Detroit they have a great American plan and that is nonunion, as you know.

Mr. WELCH. You are not going to condemn a bill on account of those who appear as advocates of it, are you? I say that, knowing as I do, that contractor after contractor in my home city who have always been fair to labor favor predetermination.

COMMISSIONERS OF THE DISTRICT OF COLUMBIA,
Washington, May 9, 1932.

To the CHAIRMAN COMMITTEE ON LABOR,
House of Representatives, Washington, D. C.

DEAR SIR: The Commissioners of the District of Columbia have the honor to transmit herewith a memorandum prepared by the corporation counsel of the District of Columbia, with regard to Senate bill 3847, Seventy-second Congress, first session, entitled "An act to amend the act approved March 3, 1931, relating to the rate of wages for laborers and mechanics employed by contractors and subcontractors on public buildings."

This bill passed the Senate on April 18, 1932, and is now before your committee for consideration. The comments of the corporation counsel as to changes which should be made in the bill by your committee have the approval of the commissioners of the District of Columbia. The corporation counsel will present this letter and is authorized by the commissioners to represent them in the consideration of this bill.

Very truly yours,

L. H. REICHELDERFER,
President Board of Commissioners of the District of Columbia.

MAY 6, 1932.

To the Commissioners:

In re reference E. D. No. 230443-6 (C. C. O. No. 16935/106); Senate bill 3847, entitled "An act to amend the act approved March 3, 1931, relating to the rate of wages for laborers and mechanics employed by contractors and subcontractors on public buildings."

Report: The proposed legislation which was passed by the Senate on April 18, 1932, was apparently referred to the House Committee on Labor on April 22, 1932. Section 2 of the bill provides that the advertised specifications for every contract in excess of $5,000 for construction, alteration, or repair of public buildings or public works in the District of Columbia or any State shall state the prevailing rate of wages for various grades of mechanics and laborers as determined by the Secretary of Labor and that every such contract shall contain a stipulation that the contractor and his subcontractors shall pay not less than the rate of wages stated in the advertised specifications. If, however, the work contemplated requires more than three months to complete, the Secretary of labor at the request of the head of the department concerned, or on petition of the contractor or subcontractors, or the petition of not less than 20 laborers and/or mechanics, shall reexamine the prevailing rate of wages and adjust the wage scale to be paid on any such work. It further provides that the books and pay rolls shall show the actual wages paid and be open to inspection by "an authorized officer or employee of the United States."

Any contractor violating the provisions of the bill hereinbefore outlined "shall forfeit to the United States the sum of $10 per day per laborer or mechanic for every day any laborers or mechanics are paid less than such prevailing rate of wages, and for each * * * refund required from any mechanic or laborer, shall forfeit to the United States a sum not less than five times the value thereof." The amounts of these penalties shall be deducted by the Comptroller General from contract payments or be recovered by the United States through suit. Out of such forfeitures the laborers and mechanics shall be paid and the balance remaining shall be covered into the Treasury as miscellaneous receipts.

Section 3 of the bill makes provision for wages to be paid laborers and mechanics "when any of the departments * * *, including the District of Columbia, perform work by Government plant and hired labor which could have been performed under contract, but not including work in arsenals or navy yards." These provisions are similar to those applying to contractors in the matter of rate of wages and a reexamination and possible readjustment thereof on work not completed within three months.

In reviewing this bill we are impressed by the fact that while by some of its terms it is made applicable to specifications and contracts for municipal construction and repair projects, there is no provision in the case of a reexamination and increase of the wage scale upon a municipal building project for payment to the contractor of the increased cost of labor, although section 2 of the bill provides that the United States will pay the amount of such additional cost to the contractor, presumably upon Federal Government projects. There is no provision therein for inspection by District officers or representatives of the books and pay rolls of contractors upon District work, although representatives of the United States are accorded that right, presumably under Federal contracts. Furthermore, the forfeitures provided for, run to the United States and where suit is directed to be instituted, that action is to be brought by the Federal Government and the balance of such penalties after paying the amounts due laborers and mechanics is directed to be deposited to the credit of the United States. It would seem appropriate in our view that when the work is being done for the District of Columbia, representatives of that agency should be empowered to inspect the books and pay rolls of the contractor, and the penalties imposed should inure to municipal benefit after payments to laborers and mechanics, of just claims presented by them.

Of more serious concern from the standpoint of the District, however, is the provision (sec. 3) that when "the District of Columbia performs work by Government plant and hired labor which could have been performed under contract," it shall also pay not less than the prevailing rate of wages as established by the Secretary of Labor. The chief clerk, engineer department, in commenting upon this section calls attention in a memorandum herewith to the effect of the act upon the District scale of pay as fixed by the wage board. As an example he cites the disparity between the District pay rate of $7.60 per day for painters and $11 per day determined by the Secretary of Labor for painters working on the interior of the Internal Revenue Building, which rate was based upon the prevailing wages for such labor in the District of Columbia.

The plain language of the bill leaves no doubt that it was the intent of Congress to provide for a uniform wage scale for laborers and mechanics in the Federal and municipal government plants except in arsenals and navy yards and those privately employed, when the former are engaged on projects exceeding $5,000 in cost and such work could be done by contract.

What appears to us as an inadvertence, however, is the provision on page 4, beginning at line 10, directing that "any amounts to be forfeited * * * shall

be deducted by the Comptroller General from any sums due the contractor from the United States." In the case of a District contract nothing would be due by the United States to the contractor and as there is no provision granting authority to deduct the forfeiture from money due by the District to any contractor, the bill in its present from carries no authority for collection of the penalties on District contracts. This section in our opinion should authorize the commissioners to deduct such penalties and if suit were brought for their collection the bill should provide for such action by the commissioners of the District and that the balance of penalties recovered after payment of wage claims be deposited in the Treasury to the credit of the District of Columbia.

The bill under discussion seems to have been drafted with Federal Government contracts and projects uppermost in mind, and while it is undoubtedly true that "teeth," which by their absence from the original act made that legislation impossible of effective enforcement, have been provided in generous measure in this bill, that lack has been supplied in our view only so far as concerns Federal contracts and projects.

The effect of this bill if enacted into law, from the standpoint of the District of Columbia, will likely be to increase the cost of any construction undertakings of the municipality with its own labor, without providing effective means of enforcing the wage provisions of its agreements with contractors upon public works.

Recommendation: In view of the premises it is recommended that every possible effort be made to effect such changes in this proposed legislation as will at least make the penalties therein provided applicable to District as well as to Federal Government contracts and projects.

WILLIAM W. BRIDE,
Corporation Counsel, District of Columbia.

ILLINOIS MANUFACTURERS' ASSOCIATION,
Chicago May 7 1932.

Hon. WILLIAM P. CONNERY Jr.
Chairman House Labor Committee,
House Office Building, Washington D. C.

DEAR MR. CONNERY: We are submitting herewith a statement by the Illinois Manufacturers' Association relative to the above proposal which is we believe, self-explanatory.

This statement represents the views of the manufacturers of Illinois upon this proposed legislation and we will be very grateful if you will, as chairman of the committee undertake to have our statement brought to the attention of the members of the House Labor Committee before action is taken on the measure.

Assuring you of our appreciation of your cooperation in this respect, we are,

Respectfully yours,

JAMES L. DONNELLY,
Executive Vice President.

STATEMENT BY ILLINOIS MANUFACTURERS' ASSOCIATION RELATIVE TO METCALF BILL (S. 3847)

The Illinois Manufacturers' Association wishes to take this means to earnestly protest against the enactment of the above measure.

The act of March 3, 1931 (the Davis-Bacon Act), requires the payment of the so-called prevailing rate of wage to laborers and mechanics on Federal building contracts.

The bill now under consideration would extend the application of the so-called prevailing rate of wage to all public works engaged in by the Federal Government as well as to work by government plant and hired labor which could have been performed under contract, but not including work in arsenals or navy yards.

We do not question the propriety of the Federal Government paying a reasonable rate of wages.

We submit, however, that the effort to determine by legislation the rate of wage to be paid on governmental projects in the manner provided in this and similar so-called prevailing rate of wage measures in impracticable, economically unsound, and utterly unfair to the taxpayers.

Although this so-called prevailing rate of wage legislation has been promoted in our Federal Congress and in the various State legislatures under the guise of a means for insuring payment of a reasonable wage on public projects, we believe

that the principal motivating influence has been and is the ambition of organized labor leaders to impose indefensible scales of wages of their own concoction upon Federal, State, and local taxpayers.

We believe that the practical result of this type of legislation has been and will be to materially increase the cost of construction of public works and to seriously curtail the volume of such work, with a corresponding increase in unemployment and a serious increase in the cost of governmental operations to the already overburdened taxpayers.

We understand that under similar existing laws—although what constitutes the prevailing rate of wages is a question of fact in relation to the kind of labor for which the worker is paid—in the majority of instances an artificial standard representing the so-called union scale of wages has been adopted as the prevailing rate of wages.

An illustration of the practical operation of this type of legislation is furnished by the recent experience of the State of Illinois. A measure providing for the so-called prevailing rate of wage on public works was enacted by the Illinois General Assembly in 1931. Immediately following the passage of the bill, the State undertook to let contracts covering over 80 highway-construction projects. The representatives of organized labor immediately challenged the rates incorporated in the advertisements for bids and contended that the intent of the law was that the prevailing rate of wage should be the highest rate paid in a given locality, irrespective of the fact that such rate was paid only to a relatively small portion of the aggregate number of workers engaged in work of similar character in the said locality; that, in effect, the union scale of wages is always the "prevailing rate of wages," whether so in fact or not.

They cited as justification for their contention the rulings by the Secretary of Labor under the so-called Federal prevailing wage act of March 3, 1931. As a result of these protests, public highway construction, representing an outlay of over $4,500,000, was seriously delayed depriving thousands of men of an opportunity for employment, while the validity of the law was being tested. If the contention of the complainants had prevailed, the amount of highway construction in Illinois would have been reduced approximately 40 per cent, with corresponding increase in unemployment, both on the roads and in the plants furnishing materials, and material injury to the taxpayers of the State. Fortunately, the measure was declared invalid.

This present proposal (S. 3847) not only extends the application of the prevailing rate of wage to cover all public works engaged in by the Federal Government, but extends the principle of the prevailing rate of wage to work by Government plant and hired labor which could have been performed under contract, but not including work in arsenals or navy yards.

This provision would, no doubt, be construed to mean that the wage scale arbitrarily set by organized labor will be made applicable to any departmental work of the Federal Government, which is of such character that it would be possible for the Government to have such work performed under contract, notwithstanding the fact that it might not be desirable for the Government to have such work done under contract and notwithstanding the fact that the Government does not elect to have such work performed by private contractors. For example, this provision could be construed to cover employees in the Government Printing Office, the Post Office Department, the various mints, the Bureau of Standards, and much of the work in the Department of Commerce or other governmental departmental operations which do not inherently involve the exercise of real governmental functions.

The result of the naturally ensuing organizing of the bureaus can readily be seen.

The provisions of this bill would probably be construed to cover all Federal-aid highway work in all the States of the United States. In Illinois this would cover about one-third of the annual $30,000,000 of highway construction projects. It is estimated, however, that the serious legal questions of construction of the statute involved would hold up for many months—and probably for the duration of the present season—some $6,000,000 of highway construction work in Illinois alone.

Since different scales of wages can not, as a practical matter, be satisfactorily maintained on contemporary public work, the practical result of this bill would be the forcing of the arbitrary union scales of wages upon all States choosing to build Federal-aid highways for all their public work. The local governments would be affected. Private industry would be affected. An endless chain of governmental interference would be the result.

The practical result of this startling extension of the principle of the so-called prevailing rate of wage would be the organizing of the various Federal, State, and local governmental departments, and unwarranted interference with business.

At this time, when the entire country is harassed with excessive burdens of taxation, when the need for governmental economy is so universal, and when business is so disturbed, the effort to so extend this so-called prevailing wage principle is wholly indefensible.

The extent to which the proponents of this measure are willing to go in their ambition to exploit the general public to promote their selfish interests is evidenced by the fact that this proposed amendment to the "prevailing rate of wage" law would remove from the law the present provision that in time of emergency its operations may be suspended by the President of the United States. The practical result of this latter provision would be that during times of emergency, including periods when the country was at war, the rates of pay for employees of the various governmental departments affected as well as the rate of pay incorporated in public works contracts, would be determined, not by the Government, but by organized labor leaders.

We know we are warranted in the assumption that the majority of the members of the Federal Congress would not purposely impose this flagrantly unfair, costly, and destructive legislation upon the people of the country.

We respectfully and earnestly submit that this measure should be defeated.

(Thereupon, the committee adjourned to meet Wednesday, May 11, 1932, at 10 o'clock a. m.)

REGULATION OF WAGES PAID TO EMPLOYEES BY CONTRACTORS AWARDED GOVERNMENT BUILDING CONTRACTS

WEDNESDAY, MAY 11, 1932

HOUSE OF REPRESENTATIVES,
COMMITTEE ON LABOR,
Washington, D. C.

The committee this day met at 10 o'clock a. m., Hon. William P. Connery, jr., chairman, presiding, for further consideration of S. 3847, which is an act to amend the act approved March 3, 1931, relating to the rate of wages for laborers and mechanics employed by contractors and subcontractors on public buildings.

The CHAIRMAN. The reason I asked the committee to put the 5-minute rule into effect is because we have been over this subject before and have the previous hearings and we know what it is about. The main thing now is to get the objections into the record. The information being given is not for the benefit of the committee, but is to perfect the record. We have another bill besides this which we should like to consider; so we will go right along.

STATEMENT OF WILLIAM J. GALLAGHER, GENERAL ORGANIZER OF THE BROTHERHOOD OF PAINTERS, DECORATORS, AND PAPERHANGERS

The CHAIRMAN. The first witness to be heard this morning is Mr. William J. Gallagher, general organizer of the Brotherhood of Painters, Decorators, and Paperhangers.

Mr. GALLAGHER. Mr. Chairman and members of the committee, I see by the change of bills here that the committee ought at least to get some little words of thanks and praise for looking after men who do the painting and decorating on jobs. The worthy Comptroller General of the United States saw fit some time ago to render an opinion, because I believe under the law he is not privileged to make a decision; he gave an opinion and that opinion has been rather disastrous to members of our organization. It has deprived them of work they should have gotten. It is an amended bill that I understand the committee is going to take up for discussion and probably recommend for adoption.

I am opposed to this bill, Mr. Chairman and members of the committee, as I said in my talk to the committee at the last meeting; and I think, I gave some logical reasons why we believe that the bill is one utterly impossible of execution; and I still maintain that it is impracticable. It can not be done, I do not care what anybody else says.

Statements have been made by advocates of the bill, and I might read one by Mr. Hushing on March 17, 1932, before the Senate

Committee on Education and Labor in a hearing on S. 3847. Reading from page 8 of that record, I find:

The CHAIRMAN. There is not any way we can be fair to both.
Mr. HUSHING. I don't think you can do it by this method, by predetermining the rate. It might be done by some agreement between the contractors and the labor organization, whereby they would agree that the rate of wage would be held in status quo during the period of time they were at work on that job, or some agreement of that nature.

That was taken up by the advocates of the bill and replied to in an altogether different way. Mr. Edward J. Harding, managing director of the Associated General Contractors of America, also testified before the Senate Committee on Labor that same day, and he said, in part:

If I may break in there, gentlemen, the previous witness stated that he believed that some sort of an agreement could be worked out whereby organized labor and contractors could get together and determine the rate. Gentlemen, under the Executive order, all contractual relationship between contractor and labor is wiped out. Therefore, I think the Executive order in itself prohibits what the previous witness said.

That is not the intent of that paragraph. That paragraph was put in there by the official heads of the various departments in Washington to take care of the many wrongs that were committed on these jobs by subcontracting these jobs to groups of men. For instance, a subcontractor got a job on a Government project and he knew he could not pay the prevailing rate of wages, therefore he would let the contract out piecemeal to a group of four or five workmen; and that is why that particular clause was inserted. It was not to abrogate any contract between contractor and workers.

The CHAIRMAN. Some one has put in a bill looking to the segregation of all contracts. I am in favor of that proposal. I am wondering how you feel about it.

Mr. GALLAGHER. That should be. There are many of these that should be cleared up. There are misstatements put forth for the sole purpose of confusing the testimony of people who were before the committee. That is the real purpose of them. On March 17, last, Mr. Harding, before the Senate Committee on Labor, stated that—

William J. Gallagher, organizer of the Painters, Decorators, and Paperhangers of America, also recently admitted before the House Committee that predetermination might clarify the atmosphere. He pointed out that the Secretary of Labor to-day has all the rates paid in the building industry at his finger tips.

Now, that is exactly what I did not say. What I did say, in answer to a question by Mr. Lovette, I believe it was, was "if it could be done"; and there is quite a difference between that language and the language attributed to me. I said, "If it can be done, it might clarify the atmosphere." One would lead the committee to believe I was in favor of the predetermination of the rate of wages; while, on the other hand, what I said was in line with my objection to the predetermination of the rate of wages. If anybody can tell me the real purpose behind the introduction of this bill, I wish he would do it. I can not comprehend it at all. The Davis-Bacon Act was introduced by Senator Davis, a Republican. The coauthor of that act is Representative Bacon, also a Republican. It was passed and became law; and it has, in my judgment, been a useless piece of legislation ever since it was enacted, because all it has done is to keep representatives in Washington trying to straighten out jobs they can not get straightened

out. Because of the many abuses and because we were busy trying to get something done to correct this, it became evident to heads of the departments that we were trying to clarify the act. They got busy and got an Executive order. A Republican administration issued that order. And now we are confronted by a Republican administration's bill that would kill both of the bills we got. Really, I can't understand this. If this were a Democratic administration, I would understand that, possibly, it was trying to upset the work of Republicans for party expediency, and I would see the logic in it.

Mr. KOPP. What is the best thing to do, in your judgment?

Mr. GALLAGHER. In what respect?

Mr. KOPP. Do you want the Davis-Bacon law and the Executive order to stand?

Mr. GALLAGHER. Yes. The purpose of the Executive order was to hold these contractors to a proper fulfillment of the contract according to the specifications of the job. This predetermination of the rate of wages means that the rate of wages must be set before the contract is advertised. That could be set very quickly by the Secretary of Labor if that is the proper machinery. And may I say this—a statement has been made here by the vice president of the Associated General Contractors of America, and if this is the real purpose of those who are favoring the bill, then I am for the bill, predetermination of rate of wages, because Mr. Walbridge, vice president of the Associated General Contractors of America, said, before the Senate Committee on Labor on March 17 last:

The CHAIRMAN. Can you see any fairness to labor in the bill that is now before us?

Mr. WALBRIDGE. I think it is the fairest thing that labor has had presented to us. They determine the wages that shall be paid themselves and we sign up for them and we pay them. The other way is unfair to labor, to just let them go out and let the contractors get away with anything they can; and they are doing it. It is the fairest thing that labor has ever had presented to it, because they determine the wages that shall be paid to their own men, and the contractors agree to it.

If that is the real intent of the Associated General Contractors, then I am in favor of the bill if we are going to set the wages. They are set already all over the country, in every town, city, and hamlet; and the idea of anybody saying that because of the fact that men are in contractual relations with their employer that is not the prevailing rate of wages. You can go right here in Washington, where the rate of painters is $11 a day, and find men working for from $4 to $7.50 a day.

Mr. KOPP. Do you feel that if wages are predetermined wages will be less than they are under the Davis-Bacon Act?

Mr. GALLAGHER. It will all depend upon the machinery that may be set up to bring about or to predetermine the rates. The Secretary of Labor has in his office the prevailing rate of wages in every branch of building construction. He has the rates for bricklayers, plasterers, carpenters, painters, electrical workers, and so on down the line. Those are the prevailing rates of wages in every city, town, and hamlet in the United States; and I defy anybody to tell me what other rates are the prevailing rates.

Mr. KOPP. I am not trying to controvert that. I just want to know how you feel about this matter. Do you feel that under a predetermined rate of wages you would suffer a loss?

Mr. GALLAGHER. Yes; because of the fact that the prevailing rate of wages would be gathered improperly. Let us take an isolated place where there are no labor unions and say that the Government is to construct a building there, and the talent to construct that building has got to be brought from some city 4, 5, or 6 or more miles from the site of the construction. How could one determine the rate of wages on that job? From where would he get his data—from the locality in which the construction is to be and where there are no mechanics employed?

Mr. KOPP. If there is a predetermination of the prevailing rate of wages, the Secretary of Labor will do it.

Mr. GALLAGHER. Yes.

Mr. KOPP. Why would the Secretary make a lower rate of wages if the wages were predetermined than he would if they were determined after the contract was let?

Mr. GALLAGHER. If the setting of a fair wage for the various jobs of the Government throughout the country were left in the hands of the Secretary of Labor, I would have no fear because I think he would set a fair and honest wage for everybody.

Mr. KOPP. Do you feel that there is more danger if——

Mr. GALLAGHER (interposing). Yes; because his department at the present time is short of money to run that department, in the first place. I know that the enactment of this measure into law would mean that the Secretary of Labor would have to have more men in the department to take care of this particular work, to go out to gather statistics as to the prevailing rate of wages in the various cities and towns; and he has not the facilities now. I told him that he has the easiest job—just turn around in his chair, get his statistics, and say that the rate for painters in, say, Kalamazoo, Mich., is $1.25 an hour, and an investigation is not needed, and if it is $1.25 an hour it should be paid. However, the fact they say it is $1.25 an hour doesn't make it so.

Mr. KOPP. If the Secretary of Labor had the means to send the necessary force into the field could we not reasonably expect that he would make the same determination before as after the letting of a contract?

Mr. GALLAGHER. I do not want to dispute the fact that no matter what sort of legislation we have there is always a possibility that predetermination could be brought about, but as to whether it is going to be fair to those doing the work is another question.

After a rate is set by predetermination and if a strike takes place on that job, what position would organized labor be in? Again whom would they strike, the contractor or the Government?

The CHAIRMAN. The contract is not with the Government; it is with the contractor. How could the workmen strike against the Government?

Mr. KOPP. Why, if the Secretary of Labor has the necessary help, should he not be as fair to labor when he predetermines the rate of wages as he would be when he determines it after the contract is let?

Mr. GALLAGHER. I am not accusing the Secretary of being unfair or unjust to labor, if left to make these decisions.

Let us suppose that a contract is awarded to-day under the provisions of that bill and that it reads that within 30 days the contractor may send some scouts around after the rate of wages has been

set, and those scouts bring in some sort of statement that will technically prove in a sense that the rate of wages should be lower, under this bill the Secretary of Labor would be compelled to take up their grievance and decide whether the rate of wages should be lower. It is a certainty these days that the rate of wages will not go up. We know that they have gone down.

Mr. KOPP. Do you feel that under the opportunity the contractor has for another determination of the rate he would make money?

Mr. GALLAGHER. We had a job right here in Washington, about which job I will tell you in connection with this very bill. The painters, as you know, were the first people to get a decision as to the prevailing rate of wages, and it was rendered in connection with the Internal Revenue Building, which was constructed by a New York City firm. The Secretary of Labor made a decision on that job and it provided for a rate of $11 a day for painters in Washington. What was discovered after that job was completed? I had the pleasure, with a gentleman who is now in this room, of being in the office of the director of the Conciliation Service of the Department of Labor when one of the employees of the department came in with a large black portfolio filled with papers addressed to the Secretary of Labor. I do not know who sent it, but it was from some place on Fifth or Sixth Street. That gentleman asked me whether I knew anything about a certain firm in New York City and I answered him in the negative. Thereupon he placed his hand in the jacket and pulled some of the papers out and I saw that they pertained to the Lyons Construction Co. job. I said to him, "Let me see those papers," but he would not do it. However, we saw those papers afterwards, and they proved conclusively that the company had two sets of books and two sheets upon which they made returns to the United States Government. One sheet showed what the workmen were supposed to actually get and the other showed what they actually got. Do you mean to tell me that under this bill such a practice could not be continued? The fellows who want this pending bill are the ones who want to and do violate the law. We do not find any bona fide contractors appealing for a redress of grievance under existing law. You do not find the Thompson Co., the Sterrett Co., the Griffin Co., or any other big general contractor who is bona fide coming here complaining about the workings of this law. And you do not find us complaining against them.

Mr. KOPP. Do you feel that it would be easier to violate the law if we should pass the pending bill than it is to violate the present law?

Mr. GALLAGHER. Absolutely, yes.

Mr. ELLZEY. As I understand, you are staisfied with the present law?

Mr. GALLAGHER. Yes, if enforced.

The CHAIRMAN. I should like to make a statement at this time. Mr. Roberts, legislative representative of the American Federation of Labor, called me on the telephone yesterday to speak about the hearings of the day before when I had referred to the visit of Mr. Welch and myself to Mr. Green, and he said that Mr. Green had changed his mind in regard to this proposal. I had made the statement that Mr. Green was in favor of the bill, and he said that Mr. Green had changed his mind. I suggested that he, Mr. Green, send

a letter to the committee stating his position, so that we would have it in black and white. Mr. Roberts said that Mr. Green declined to do that. Thereupon I suggested that he send somebody over from the American Federation of Labor, representing Mr. Green and to speak in Mr. Green's name.

The general trend of my conversation with Mr. Roberts was that Mr. Green had expressed himself as being in favor of this bill when he talked to Mr. Welch and me, but Mr. Roberts said it was understood that our conversation with Mr. Green was a confidential conversation. I did not so understand it, and I do not believe that Mr. Welch so understood it. There were present at that conference Mr. Green, Mr. McGrady, Mr. Roberts, Mr. McDonough, Mr. Welch, and myself. We did not consider the conversation confidential at all. I want the committee to know these things. Of course Mr. Green has the privilege of changing his mind if he wishes to do so; but, as I have said, I asked that they put this down in black and white, but Mr. Roberts said Mr. Green would not do it. He said he would send over some representative of the American Federation of Labor here to tell the committee what Mr. Green's position in this matter is.

I want to say, further, in fairness to all concerned that I received about three months ago what I considered to be reliable information in connection with this matter. But, first, to go back to the beginning of this legislation—labor representatives came here and said they wanted teeth put into the bill; they wanted a penalty clause; some of them went on the stand and favored predetermination of the rate of wages. You will recall the day Secretary Doak came here. The representatives of labor stood up one after another and said they were satisfied with the Davis-Bacon law and the Executive order and that they did not want any general legislation from this committee. I had received information that the reason the building trades said that was because they had promised the Secretary of Labor that if this Executive order went through they would not favor further legislation by this committee. I think that, in justice to the committee, the committee should know this.

If there is any representative of the American Federation of Labor here this morning to represent Mr. Green, I am sure the committee would like to hear him?

STATEMENT OF THOMAS A. LANE, SPECIAL DEPUTY OF THE BRICKLAYERS, MASONS, AND PLASTERERS INTERNATIONAL UNION OF AMERICA, WASHINGTON, D. C.

The CHAIRMAN. The next witness to be heard is Mr. Thomas A. Lane, of the Bricklayers, Masons, and Plasterers International Union of America, 1417 K Street, NW., Washington, D. C.

Mr. LANE. Mr. Chairman and members of the committee, of course, this situation is somewhat confused. Unfortunately, we have friends on both sides of this question of predetermination.

The CHAIRMAN. I should like to ask a question, but you do not have to answer it. If it is a confidential matter, do not answer my question. Have you any knowledge of any promise made by the building trades to the Secretary of Labor or to President Hoover or to anybody else in the Department of Labor that if the Executive

order went into effect the building trades would be against any further legislation by this committee?

Mr. LANE. I have understood that such was the understanding. There was a meeting at the Department of Labor and there was a subsequent meeting at the White House. That is generally understood by all of us—that some sort of meeting took place. Of course, you have this situation, that the Bricklayers, Masons, and Plasterers International Union, the Brotherhood of Electrical Workers, and the Brotherhood of Carpenters and Joiners were not a party to any such understanding. You have these three groups, which compose almost 50 per cent of the building-trades mechanics which were opposed to that at that time.

On this question of a predetermination of the rate of wages, from a technical standpoint it is hard to argue against a predetermination of wages, but at the same time those of us who have been handling this matter, who have been handling the complaints that have come in from the various organizations affected in the communities where these jobs are under way, are of the opinion and it is the unanimous opinion of the organizations both in and out of the building-trades department that a predetermined wage scale is a bad thing for the trade organizations. As a practical matter, when a complaint comes in under the present system, like the complaint from Topeka, Kans., about which Mr. Lambertson knows, the contractor has to go in and make some investigation as to the rate of wages, and when he does that, if he wants to be fair and safe, he will go in and talk to the local mechanics and the representatives of their organization and that frequently results in a conciliator being sent in to try to adjust that difficulty. And the local mechanics and laborers, being desirous of securing employment for those who reside in the community—and that was one of the main purposes of this legislation, generally are able to come to an agreement with the contractor.

One of the chief reasons for the creation of this public-building program was to afford work for local resident mechanics. Under the present law the local mechanics and laborers, with the conciliator from the Department of Labor, have a chance to talk with contractors and discuss not only the matter of wages but the question of employing men. That has been the result in Topeka affecting the masonry work at least. And referring to the post-office job at Elizabethtown, Tenn., if we had had predetermination of wages on that job, the residents of that district would not be employed, because the contractor intended to bring in men from the outside; but as a conciliator was sent in and discussions were had, the contractor has got the benefit of the wage rate from the local men in order to give those local men employment. We have not been 100 per cent successful with this present law, but we have that opportunity under it.

As you gentlemen know, further, we came before this committee and advocated from the first a penalty clause. We were told by the committee, by the Secretary of Labor, by Mr. Bacon, and their position was acquiesed in by the chairman of this committee and by other members of the committee that we could not dot an "i" or cross a "t" in the original bill. In the last hearings the position was that we had an Executive order and should give it a chance to work. The Executive order provides that it shall not apply on any contract or operation for which bids have been invited, so that the Executive

order has not in fact become effective. Those were the views of the Republican members of the committee, they were acquiesed in by other members of the committee. As I said, we have not done that because the Executive order has not in fact become effective.

We are not in exact accord with the Executive order; we felt it should be placed in the statute books, but we are now confronted by the situation wherein we were told that we could not put in a penalty clause, that we could not put the Executive order into law; but now the contractors' group comes in with a whole new set-up; and it seems to me that the President is not being given a fair chance.

I understand that the Secretary of Labor and Mr. Bacon discussed this matter with the President and that the President's position was known; but we have forgotten all about that.

The CHAIRMAN. Senator Metcalf and the President sit pretty well, do they not?

Mr. LANE. I presume they do.

The CHAIRMAN. And with a unanimous vote in the Senate on this matter, there must be a few Senators who are friendly toward the President.

Mr. LANE. In the Senate this bill went on the Unanimous Consent Calendar. I asked why Mr. Hushing did not inform us of the Senate hearing, and he said he was called late one afternoon, and nobody else was notified of the Senate hearings. We had no knowledge of the Senate hearing on this bill, and if we had been notified, we would have been before the Senate committee opposing this bill.

This bill, of course, is drawn up by those, as I stated in previous testimony, who are opposed to the idea of paying the prevailing rate of wages.

There is in the bill a provision for a 10-day period within which workmen must file complaints. At the present time, under the administrative orders of the Treasury Department, material men and contractors have six months to a year to file, yet this bill limits labor to a period of 10 days after payment or refund to make complaint; yet it is said that labor is getting a good break, and that this bill is for the benefit of labor.

Then there is the provision that refers to a predetermined wage rate which required the filing of a complaint by 20 workmen actually employed by the contractor. The last two provisions I have mentioned make this bill objectionable. I am referring to the Metcalf bill, S. 3847.

The Algernon-Blair Co. is the main violator of this law, and it takes groups of workmen from one Federal project to another.

That company is building the post office at Shreveport, La. Under this bill they could pay whatever they wanted to pay at Shreveport and then move their men to Key West and employ them 10 days, and so long as the group was employed they would say nothing. If they said something about the wages at Shreveport, Mr. Blair would say, "Well, the 10-day period has elapsed."

Mr. RAMSPECK. Where is that in the bill?

Mr. LANE. It is in the bill beginning in line 12 and ending in line 25, page 4, S. 3847.

The CHAIRMAN. In H. R. 11865, page 4, beginning in line 12, it says:

> Any laborer or mechanic employed on any such work who accepts a rate of wages less than that prescribed in the advertised specifications, or in any subsequent revision thereof made by the Secretary of Labor, or who makes any refund to the contractor or subcontractors shall, within ten days after such payment or refund, file a sworn statement with the Secretary of Labor setting forth the facts, and any amounts to be forfeited as provided in this section shall be deducted by the Comptroller General from any sums due to the contractor from the United States, or if nothing remains due the contractor, such amounts may be recovered by the United States as a debt in a suit at law against either the contractor and his surety or his subcontractors.

That concerns the man who accepts a rate of wage that is less than the prevailing rate or who gets a refund. He will not go in and do that of his own free will after accepting a refund anyway.

Mr. LANE. That is the way the contractors evade the law.

The CHAIRMAN. There is in section 3, H. R. 11865, a provision suggested by Mr. Ramspeck saying:

> If, however, the work contemplated requires more than three months for its completion, the Secretary of Labor, at the request of the head of the department, independent establishment, or other agency of the Government concerned, or of not less than twenty laborers and/or mechanics employed on the work, or the officers or representatives of associations or organizations of laborers and/or mechanics shall from time to time reexamine the prevailing rate of wages being paid to laborers and mechanics for work of a similar nature in the city, town, village, or other civil subdivision of the State or the District of Columbia, in which all or the principal part of the work is located * * *.

There is no 10-day period mentioned there.

Mr. LANE. The Secretary of Labor under this [indicating] bill as written and even under that [indicating] bill can set a rate of wages which would be satisfactory, but if the men are compelled to give refunds and then file complaints within 10 days——

The CHAIRMAN. That is only on refunds.

Mr. LANE. That is the way they are getting around the law, through refunds.

The CHAIRMAN. It does not say that the representatives of labor can not kick on the whole thing.

Mr. LANE. It says 20 employees. The main scheme of getting around the prevailing rate of wages is through refunds. In order to catch those contractors we have sent our men to the job to see if the refunding practice was being followed. The contractors tell their workmen, "Come around to my house Monday morning, and unless you leave so much money with the foreman, you are fired." Under the present economic conditions there are men with families who will not, fearing for their jobs, say anything about that.

Again, I want to say that you give the material men six months within which to file their complaints.

The CHAIRMAN. Suppose we should put "six months" in there?

Mr. LANE. That would make the bill less objectionable.

Mr. RAMSPECK. Would not 90 days be satisfactory?

Mr. LANE. Ninety days from completion of the job might cover it, but not 90 days from the date of the complaint. As I have said, the present administrative rulings of the Secretary of the Treasury give six months to subcontractors and material men, and I think labor should have the same length of time material men and subcontractors have to file claims.

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Mr. KOPP. Labor should be free from the influence of the contractor.

Mr. LANE. Yes.

Mr. GALLAGHER. I have in hand a job where the contracting painter fell down and the general contractor notified the foreman painter on the job to keep on with the work and that he or somebody else would pay them. As a result seven men worked a week on that job and they have not yet received a cent, and that is a big Government job.

The CHAIRMAN. If you have a six months' provision, it would take care of that objection?

Mr. GALLAGHER. Yes.

Mr. LANE. I want to say, further, that——

The CHAIRMAN. Mr. Lane, your time is up; I am sorry.

Mr. LANE. The contractors were given unlimited time, and I feel that we are being gagged.

The CHAIRMAN. I will gladly put the matter up to the committee. I am sure we will not be unfair to anyone; and there will be no gag rule here. So far as I personally am concerned, if labor feels that it wants and needs more time, it is going to get it.

Mr. GREEN. I am willing and anxious to hear anything the gentlemen may have to say.

Of course, what the committee wants is full information, and the chairman of our committee has always granted sufficient time to everybody, and he has stated the reason for the limitation placed upon witnesses. Our chairman has been possibly more generous in allotting time than the chairman of any other committee on which I have served. To be sure, everybody wants to be fair.

The CHAIRMAN. We gave the contractors two days to present their case; and this is the second day for labor. However, you gentlemen may have all the time you desire to-day, to-morrow, and the next day.

Mr. LANE. I want to get this thought over to Mr. Welch,who knows about the Executive order. Our organization and some other organizations wanted to put in a penalty clause in the original legislation and in the legislation suggested in the hearings this session. As I understood, it was agreed that the Executive order would be given a fair chance to work; but that Executive order, as I have stated, has not been given a chance to prove itself.

Mr. WELCH. It was not retroactive.

Mr. LANE. It was not retroactive. Not only that, but it does not apply to any job for which bids had been invited, and bids are requested some times three months in advance. The Executive order was issued January 19, 1932, and we are now just coming up to the effective date of it, in practice. I really think we should give this Executive order more time to prove itself.

Mr. RAMSPECK. When we had the hearings on the Davis-Bacon bill I asked Mr. Hushing, a representative of the American Federation of Labor, whether he wanted that bill passed out without amendment, and he said that under the circumstances he thought that was the best thing to do. Therefore, please do not put the committee in the position of having refused any request of labor in this matter.

Mr. LANE. Unfortunately, Mr. Ramspeck, there was a difference of opinion among the building-trades organizations at that time.

Of course, there was no difference of opinion about the predetermination of the rate of wages; but our organization, which is the Bricklayers, Plasterers, and Masons International Union and the electrical workers and the carpenters and joiners were in favor of a penalty clause originally. Our position was different from the position of the building-trades department and the federation, although we are affiliated with the federation.

Mr. RAMSPECK. Did you appear before this committee at the time we had the hearings on the Davis-Bacon bill?

Mr. LANE. Yes; and I then stated that we were in favor of the penalty clause in it.

Mr. RAMSPECK. I am talking about the bill we passed and which was drawn by the Department of Labor.

The CHAIRMAN. Mr. Lane thought you meant at this session of Congress.

Mr. RAMSPECK. I mean the law now on the statute books. I believe that Mr. Hushing was the only representative of the building trades who appeared, and, in answer to my question, he stated that, in his opinion, under the circumstances, we had better not try to amend it.

Mr. LANE. Of course, Mr. Hushing was speaking for the American Federation of Labor.

Mr. RAMSPECK. I just want to keep the record straight. I have in my hand a copy of the hearing.

Mr. LANE. A number of things have been put into the Senate record about this bill by the Associated General Contractors. The three main complaints they have put in against the existing law and the actions of the Secretary of Labor are, first, a decision that the Secretary of Labor and the Secretary of War made with respect to a job at Langley Field, Va.; second, a decision made affecting a job at Fort Benning, Ga.; and, third, a decision affecting a job at Shreveport, La. I have already discussed the Langley Field end of the contractors' complaint.

The contractors put their complaint concerning the Shreveport job in the Senate record and it has been made a part of this record, but that complaint fails to say that the work at Shreveport, being the Barksdale Air Field, was estimated on the higher wage rate and that the contractors, by the subterfuge of subletting work on a labor-only basis, never did carry out the decision of the Secretary of Labor. Therefore, we feel that they have no just complaint and that an attempt is being made to mislead members of this committee. In connection with the Barksdale field complaint of the general contractors, the contractors making the complaint not only failed to pay the prevailing rate of wages as set by the Secretary of Labor, but they imported men from Texas and other States and refused to employ local men who had been formerly employed by them for years. Also, they flatly turned down an offer of arbitration made by the masonry mechanics of Shreveport. Only four local men were employed on that masonry work, and yet the contractors have the audacity to complain to the Senate committee about the "dirty" deal they got at Shreveport.

That is the very group of people that drew up this bill.

The local contractors' association at Shreveport in some manner divided the work at Barksdale Field among themselves and at the same time refused employment to local masonry mechanics at Shreve-

port and vicinity where conditions were bordering on starvation. Only within the past few weeks our organization was compelled to send money to Shreveport for relief. In other words, the contractors at Shreveport all have received Government contracts from which we presume they made some profit at Barksdale Field, while masonry and other mechanics at Shreveport at the present time are starving. I have here [indicating] receipts for relief money which it was necessary to pay out within the past few weeks. When we find representatives of such groups submitting legislation before this or any other committee, I believe it should be very carefully scrutinized.

Another practice that was engaged in by the contractors at Shreveport and about which they neglected to inform the Senate committee was that they reduced the wages of mechanics on jobs that did not come under the prevailing-wage law, in order to even it up.

In connection with the contractors' complaint in connection with the Fort Benning, Ga., job, which complaint was put in the record, they failed to say that the firm of Rogers & Leventhal, contractors, of Chattanooga, Tenn., were paying the rate set by the Secretary of War and the Secretary of Labor.

We cite these cases so that the Senate record may be cleared and the actual truth known.

I told you the other day about filing a complaint with the Treasury Department against the Algernon-Blair Co.

The committee might as well know that the group that is advocating this legislation has circularized the country concerning alleged statements by the chairman of this committee. It seems to us very ungentlemanly to say the least for any person to discuss pending legislation with the chairman of the committee in a private manner and then circularize the remarks made in that conference throughout the whole country. However, as I said the other day, I feel that the chairman of this committee has nothing to be ashamed of in the remarks ascribed to him and this will only strengthen his position with the laboring people of this country.

The CHAIRMAN. I wish you would put that circular in the record, because it may come in handy in the future.

Mr. LANE. I shall be glad to put it in. These contractors come here asking you for legislation, and this [indicating] is what they say about your chairman. This circular [indicating] went all over the country to every State branch of the Associated General Contractors.

The circular in question reads as follows:

THE PREVAILING WAGE SCALE

This prevailing wage law matter is perhaps the most vital matter before general contractors to-day.

What would you do if the wage scales were increased on your job by 100 per cent after your contract was signed, and at the same time you were prohibited from increasing your price accordingly?

That's what is happening on Federal contracts right now. There's no use saying Uncle Sam wouldn't treat his citizens that way. It's being done already.

Here is a case in point. It happened on a job at Langley Field.

Before bidding the job contractors went to the field which is located some distance from any large city and interviewed such members of local labor organizations as could be found. There seemed to be no active union; carpenters and bricklayers agreed that 75 cents an hour was more than fair, more than they had been getting for months. They said they would be glad to work for that on the new job.

The contractor got his job on that basis. Union organizers appeared on the scene with a following of union men from other localities. A reorganized local was set up, a meeting held, and the scale for both crafts raised, by the unions, to $1 an hour.

The contractor said he wouldn't pay. The men already had agreed to a 75-cent scale. Secretary of Labor Doak ruled that $1 was the prevailing scale and must be paid, regardless of what the contractor said about original arrangements. The $1 scale stuck.

That worked pretty good, so the unions took another whack at it. This time they voted for a $1.25 scale, and by the same perverted reasoning Secretary Doak again backed them up. The contractor paid $1.25.

Well, anything that's so easy might work again, so the unions gave a third boost and the scale went to $1.50, which is the Washington, D. C., scale. This time Secretary Doak again backed up the union and ruled that the Washington, D. C., wage scale should be the prevailing scale at Langley Field which is 200 miles from Washington.

Laugh that off when you say the Federal Government won't do these things. They are doing it, right now, and it can happen to you just as well as it can happen to the next man.

In Detroit, Colonel Walbridge had a $300,000 post office foundation job. He wrote to the Treasury Department inclosing a list of wage scales which were 30 per cent higher than scales being paid on commercial work and asked the Treasury Department if such scales would be satisfactory.

The Treasury Department wrote back and said "O. K., go ahead." The job was started and finished, but in the meantime Colonel Walbridge entered the fight in Congress for predetermination of wage scales. The unions didn't much like Colonel Walbridge's activity and when it came to collect the final estimate on the post office job, the colonel found that $150,000 of his money was being held up because the Department of Labor, through Secretary Doak, demanded that he go back and pay the prevailing scale (the union scale) on the whole job from the very beginning.

Now, Colonel Walbridge has $150,000 tied up because he is fighting your fight. He is looking out or the interests of all contractors and it will cost him a lot of money to do it, even though he gets his $150,000 eventually.

Maybe you're not interested in Government work and, therefore, think this thing can't hurt you. Whatever the Government does sets a precedent for the whole country—States, counties, institutions, and private individuals.

The trouble with contractors is that they sit on the side lines and see these things happen and then after it's done they yell to high heaven about unjustness, unfairness, and all that sort of thing. The time to kill such things is before they grow up.

Don't misunderstand the position of the A. G. C. on this prevailing wage proposition. We want a stabilized wage. We want everyone to pay the same wage and we want it to be high enough to be fair to the workingman. But we want to know before we bid what the wage will be and not put our business and all our capital representing a life's work in the hands of a bureaucratic demagogue sitting in Washington who can break every contractor on a Federal job.

We want predetermination of wage scales. We want them specified so we'll all know what they are when we start.

If you are inclined to pass these things off without a second thought, please note that organized labor is setting your wage scale.

Now, what to do about this prevailing wage business?

Let your congressional representatives know your sentiment. Advocate predetermination of wage scales. Tell why you want it. Let your desires be known. And, for Lord's sake, don't leave the job to the other fellows. Do it yourself and send copies of your letters to this office so we will know what is being done.

Do you know what the chairman of the House Committee on Labor told our representative in Washington? He said, "Every member of this committee believes in predetermination of wage scales but we won't vote for it because we are here to please organized labor."

Maybe they might want to please you, too, if you were as quick to state your desires as is organized labor.

And by all means write at once and register your objection to H. R. 10566, the Connery bill. This bill provides that on Federal river work the wages paid "shall in no case be less than the reasonable cost of living in the particular locality where the work is to be performed * * *."

How would you like to take a contract where wages were defined as in the Connery bill? Tell your Congressman and Senators what you think of it.

Now, just one thing more. How can the Bacon-Davis prevailing wage law in its present form be obviated? The answer is, only by having it declared unconstitutional.

Our national office is advised by several eminent legal authorities that the act is unconstitutional and that it can easily be proven so in court. One reason labor fights the predetermination amendment is that they are afraid to tamper with the act as it now stands.

And by all means write your congressional representatives and express your sentiment. Do this immediately and mail a copy of your letter to the Charlotte A. G. C. office, box 968.

The CHAIRMAN. I desire to make a statement to clear the record and give the conversation exactly as it occurred. Representatives of the Associated General Contractors said to me, "What will happen if this bill should pass the Senate and come over to this committee? What is the attitude of the committee on predetermination of wages?" I replied, "Are you talking theoretically or practically?" and the gentleman said, "Practically." I said, "Practically, it is my belief that the majority of the members of the committee favor predetermination of wages, but if labor does not want this, it is my belief that the committee will vote against this." Then it was asked, "Is not this committee for the whole country as well as for labor?" I asked, "Are you talking theoretically or practically?" and they said, "Practically." My answer was, "Practically, this committee was formed at the request of labor in the United States, and it is my belief that the committee will vote according to the wishes of a majority of labor in the United States." I want that in the record clearly, because within a few weeks labor may be accusing me of being antilabor.

Mr. GREEN. I do not think they could convict you on that charge, Mr. Chairman.

Mr. RAMSPECK. I should like to read into the record at this time something from a hearing conducted by this committee on January 31, 1931, in connection with H. R. 16619, which was the Bacon bill.

Quoting from the testimony of Mr. Hushing, legislative representative of the American Federation of Labor, I find:

Mr. RAMSPECK. You feel, as I understand, that it is to the best interests of all concerned to report this bill favorably without amendment and pass it?

Mr. HUSHING. Yes. If you amend it, I am afraid you will weaken its chance of passage. There is a real emergency at the present time, as we all know, and this proposed measure will help some. Perhaps after the bill has been in operation for some time we may discover changes that would be beneficial.

Mr. Hushing is the only member of a labor organization who appeared before the committee that day.

The CHAIRMAN. On page 22 of that same hearing we have the following:

Mr. CONNERY. I move that H. R. 16619 be favorably reported.

That bill was brought in by Mr. Welch, a Republican, and Senator Davis, a Republican, and I moved for the passage of it at that time, and I am a Democrat.

Mr. WELCH. According to the circular of the Associated General Contractors of America, read by Mr. Lane, they are opposing the Connery bill. The circular reads:

Write to your congressional Representatives to-day and register your objection to H. R. 10566, the Connery bill. This bill provides that on Federal river work

the wage paid "shall in no case be less than the reasonable cost of living in the particular locality where the work is being performed."

I introduced the other day an identical bill applying to highway construction receiving Federal aid.

The CHAIRMAN. If Mr. Lane has nothing further to tell us, and there are no further questions by members of the committee, let us thank Mr. Lane for his statement and hear the next witness.

STATEMENT OF M. J. McDONOUGH, PRESIDENT OF THE BUILDING TRADES DEPARTMENT OF THE AMERICAN FEDERATION OF LABOR

The CHAIRMAN. The next witness this morning is Mr. M. J. McDonough, president of the building-trades department of the American Federation of Labor, Washington, D. C.

Mr. McDONOUGH. Mr. Chairman and members of the committee, perhaps I am the one who is guilty for the condition in which this bill is in. We were informed a few weeks back that the Metcalf bill had been favorably reported by the Senate Committee on Education and Labor and that it was in the Speaker's hands, and, from the information we had obtained, the Speaker did not intend to refer that bill to this committee for some reason or other. That was the information we had. I took the matter up——

The CHAIRMAN (interposing). You will not be violating a confidence if you tell why the Speaker would not refer the bill to this committee.

Mr. McDONOUGH. It was my information that the Speaker—evidently the contractors had contacted the Speaker and said that if the bill came here it would not stand any chance. However, I want you to know that this is only my opinion. Do not think that I am quoting a statement of the chairman of the committee. Feeling that such was an unusual procedure for the Speaker, to retain a bill on his desk, when it should have in the regular course been referred to this committee, and assuming that probably within the rules of Congress that it might be taken up in the Committee of the Whole, without our having an opportunity to oppose it, I told my good friend Mr. Welch about the status of the bill. He volunteered to take the matter up with Speaker Garner; and after talking with Mr. Welch he suggested that I get in touch with Mr. Connery, and through the efforts of Mr. Connery and Mr. Welch this bill was referred to this committee.

The CHAIRMAN. I had gone to the Speaker and asked him to refer the bill to this committee and he refused to do so. Then you had a conversation with Mr. Welch. Then I called the Speaker, since I was going home for a few days, and asked him not to take action on that bill in the House before we could have something to say; and the Speaker told me that he had talked with Mr. Welch and he was going to refer the bill to this committee. He said he wanted the committee and Mr. Welch to give this bill a fair hearing.

Mr. McDONOUGH. Mr. Connery, Mr. Welch, Mr. McGrady, Mr. Roberts, and I were with Mr. Green when Mr. Connery and Mr. Welch called to see Mr. Green about this matter, and Mr. Welch and Mr. Connery will recall and admit that I was positively in opposition to the bill. The executive council of the building trades department of the American Federation of Labor at a meeting held in January last went on record as being opposed to the predetermination of wages. After conversation, pro and con, President Green stated that he did

not see anything wrong with the bill and, not wanting to embarrass the labor committee, he expressed himself as in favor of it. Knowing that Mr. Green felt that way, so far as the building trades were concerned, I stated that I would not appear before this committee in favor or against the bill. But circumstances have arisen where, in defense of the men I represent, I must appear in opposition to the bill.

I want to say for the benefit of the committee that, so far as the building trades department is concerned, in fact all organizations in the building organizations, which represent all organized workers in that industry, as evidenced here by Mr. Lane, of the bricklayers, masons, and plasterers; Mr. Blumenberg, of the carpenters and joiners, and others, we are in opposition to this bill. I believe the records will show that that condition does not prevail so far as the contractors are concerned. The Associated General Contractors of America does not embrace, I will say, 10 per cent of the organized contractors in this country. Many of the contractors in the Associated General Contractors' organization, at least 85 per cent of them, never erect buildings. Most of their work is highway construction and the like. Mr. Kaiser, president of the Associated General Contractors of America, who appeared here last week, probably never constructed a building in his life. I know he has not constructed any buildings for the Government and I doubt very much whether he has built any buildings for private industry. He is typical of most of the members of that organization. There are a number of contractors who are members of that association and who employ our men to do construction work.

So far as the Davis-Bacon Act is concerned, those same contractors bombarded Congress in opposition to the Davis-Bacon bill, and every member of this committee will recall that at that time our group was meeting with the National Building Trades Employers' Association of this country, with whom we were in accord, and that group included Mr. Norman, the president of the board of governors of the New York Building Trades Association; Mr. Rosenthal, president of the Building Trades Association of Chicago; and Mr. Skulley, who occupies the same position as the other gentlemen, in Boston, and several other contractors who employed only building-trades men appeared in behalf of the Sproul bill, which preceded the Davis-Bacon bill, and expressed themsleves in accord with that character of legislation.

I want to advise the committee that in the building-trades industry practically all of the subcontractors have a national organization which comprises the members of their group. To-day I will venture to say that there is no advocacy on the part of any of those groups in behalf of the legislation.

There is a bill before the House now known as the Goss bill. A great deal of our trouble is, as you know, with the subcontractors, with those who subcontract work from the general contractors. Most of our troubles are with those men. The subcontractors are trying to protect themselves against the pernicious practice of peddling bids and they had Mr. Goss introduce a bill which, if enacted into law, would obviate many of the abuses that are now taking place so far as the prevailing rate of wage is concerned. Mr. Goss introduced Resolution 4680, and it provides that, upon the awarding of a contract by the Government, the successful contractor shall advise the

contracting officer of the Government and the names and addresses of his subcontractors. The purpose of that is to prevent a contractor, after receiving a contract, from further peddling bids, which, as I have stated, causes most of the violations of law. The general contractors opposed the passage of this Goss resolution. If it should be enacted into law, so far as labor is concerned, we do not feel that we would have so much trouble with the prevailing rate of wages.

The CHAIRMAN. Mr. Goss talked to me about that matter a long time ago and I was in favor of it, but the contractors were against it. Labor also was opposed to it, feeling that if it came before the House the matter of predetermining wages would be made a part of it.

Mr. MCDONOUGH. I want to show the inconsistency of the Associated General Contractors in advocating a predetermination of wages and opposing the provisions of the Goss resolution, which the subcontractors feel would eliminate some or many of the abuses that now arise over the awards on Government work. There is the inconsistency.

Mr. RAMSPECK. The witness has stated that the Associated General Contractors opposed the passage of the Davis-Bacon bill. I had a letter from them, received after the committee reported the bill favorably, saying that the only objection they had to the bill was that it did not predetermine the rate of wages and that if such an amendment were put on they would not object to it. I replied to them that I did not think it wise to try to amend it, because those who appeared before the committee said that if any amendments were offered they would probably defeat it.

Mr. WELCH. I was flooded with letters and telegrams at the time the Bacon bill was before this committee, and at which time I was chairman of the committee, and my answers were very much along the line of your answers, Mr. Ramspeck. We all feared at that time, and especially with the limited time within which to get the bill through, that if the predetermination of wages provision were written into the bill it would invalidate it. It seemed that there were decisions by the higher courts against predetermination of rates of wages and that was the primary reason, I take it, for the committee refusing to amend the bill as requested by the contractors, who appealed for a predetermination provision.

Mr. MCDONOUGH. I will call your attention to a statement that was broadcast recently by the Associated General Contractors of America and verifying the statement I made. This [indicating] is a copy of their bulletin to their members in various sections of the country. Under date of April 8, 1932, this bulletin says:

> Now, just one thing more. How can the Davis-Bacon prevailing wage law in its present form be obviated? The answer is: Only by having it declared unconstitutional.

That is more evidence that the Associated General Contractors, in my opinion, are not in accord with the Davis-Bacon bill. The committee might wonder why we as building tradesmen are opposed to a predetermined rate of wages. Would not you, gentlemen, if members of organized labor, be suspicious of measures advocated by such as Mr. Kaiser, and when I refer to him personally I do not do so in an unfriendly attitude. Would you not be suspicious of anything offered by that group who come before a committee and represent the Associated General Contractors advocating measures that they

state are favorable to labor when all their activities for the past 25 or 30 years in the construction business have been unmistakably antagonistic to labor? We are suspicious when a group represented by Mr. Kaiser appears before this committee saying they want to do something for labor; because they do not want to do anything good for labor.

Mr. Kaiser stated before this committee, in answer to a question I was permitted to ask, that they made their own wage scales on the Boulder Dam project, while even the President of the United States was advocating that the prevailing rate of wages be paid on construction work. Of course, that contract was let before the Davis-Bacon Act was effective, nevertheless the President of the United States had advocated before that contract was let that the prevailing rate of wages in a particular district where Government construction was under way be paid. It is very true, and Mr. Kaiser admitted it, that they make their own wage scales. I have had 30 years' experience in the building business and a large part of that time has been spent in dealing with building contractors; and I venture to say that the same group of contractors now violating the provisions of the Davis-Bacon Act would violate it with a provision calling for a predetermination of the rate of wages in it. I believe they would do it easier and more often, for the reason that those groups now violating the law have their own organizations. When they come to a job in a city they bring their own men with them. The only opportunity we have for ascertaining the wages they paid is by surreptitiously planting men on their job. We can not go to their records and learn what they are paying. The only chance to learn that is by having one of our members act as a detective, a practice with which we are not in accord, in an effort to protect contractors. We simply have to resort to those methods.

If these contractors I have in mind wanted to play the game fairly they would not pay their workers, say, $8 a day and have them sign a pay roll showing they were getting from $10 to $14 a day. That is my experience with such contractors and that is the type of contractor with which we have to quarrel in trying to obtain proper conditions of work for our labor; and we would have to contend with them if we had a predetermined rate of wages.

Mr. RAMSPECK. If the wages were predetermined, would that not remove any incentive on the part of the contractor to cut wages? How could he benefit by a cut in wages if those wages were predetermined?

Mr. MCDONOUGH. That would apply with a fair contractor. He now knows the prevailing rate of wages. Those contractors who are now violating the law would continue to do so.

Mr. RAMSPECK. How would they benefit by cutting wages if the wages were predetermined and they knew what wages they would have to pay?

Mr. MCDONOUGH. They would benefit as they do now. They calculate to pay plasterers, for instance, $12 a day, yet they pay them only $8 a day. They would benefit to the extent of $4 a day on each man so employed.

Mr. RAMSPECK. But the wages would be set in advance and all contractors would bid on that wage scale. The way the unfair contractor benefits now is to bid a little below the fair contractor and he does that on account of the difference in the rate of wages. The incentive is, obviously, to speculate on wages.

Mr. MCDONOUGH. But he would still do it under predetermination.

Mr. RAMSPECK. But he would not have the advantage he has now over the fair contractor.

Mr. MCDONOUGH. He would definitely know the predetermined rate of wages and he would figure below the fair contractor.

Mr. RAMSPECK. The wage rate would be placed in the specification.

Mr. MCDONOUGH. He would do it nevertheless. If the fair contractor continued so and observed the law faithfully, the unfair contractor would continue doing as he is doing. Instead of gambling he would know that the wages specified were a certain amount and then he would proceed to cut his men by $2 a day. When the men went to the job he would further cut the wages of those men, and have them do as they are doing now, sign false pay rolls showing them to be receiving $12 or $14 a day, or whatever else the prevailing rate of wages might be. We never have any difficulty with a fair contractor. We never appear before the Secretary of Labor protesting that these fair contractors are not paying proper wages. It is the contractor who is unfair with whom we have difficulty in getting accurate information; and, in my opinion, those unfair contractors would still pursue the course they are pursuing and it would be difficult for us to obtain accurate, convincing information about their activities, just as it is now. As I have stated, I have been around these contractors 30 years and I know their psychology.

Mr. RAMSPECK. Everything you say they might do under this proposed bill they can do much easier under present law, can they not?

Mr. MCDONOUGH. That is a question.

Mr. RAMSPECK. Because there is no penalty.

Mr. MCDONOUGH. With the Executive order there is a penalty.

Mr. RAMSPECK. Is not the Executive order in effect a predetermination of the rate of wages?

Mr. MCDONOUGH. I would say not. There is no wage predetermination other than in a dispute, and the assumption is, I imagine, that the contractors know what the prevailing rate of wages is in each community. The contractor who violates the law also knows the prevailing rate of wages in each community.

Mr. RAMSPECK. I do not doubt that.

Mr. MCDONOUGH. That is true.

Mr. WELCH. What percentage of the Associated General Contractors are what you call fair?

Mr. MCDONOUGH. That is a rather hard question to answer. We have engaged in Government construction a certain group like the Rose Co., the Algernon-Blair Co., and the Barnes Co. that are unfair. On jobs up to a certain amount they are able to compete with and take work from fair contractors. Here [indicating in a magazine] is a list of members of the Associated General Contractors of America and, after looking over it, I think I exaggerated when I said they represent 10 per cent of the contractors of this country.

Mr. WELCH. Perhaps Mr. Lane could answer. Mr. Lane, What percentage of the members of the Associated General Contractors, referred to, are, as Mr. McDonough says, fair?

Mr. LANE. It depends on the locality involved. In the North and West they are very fair. We have most of our trouble with southern contractors who are members of the Associated General Contractors. The J. A. Jones Co. and the Sanford Co. are members of the Associated General Contractors of America and when they come to Washington the association goes to the bat for them.

Mr. WELCH. Are a majority of the members of the Associated General Contractors fair to labor?

Mr. MCDONOUGH. Fifteen per cent of the membership of the Associated General Contractors are not engaged in building work. I think the records of that association show that 85 per cent of the members of the Associated General Contractors are operating under nonunion conditions. Does that answer your question? I believe that Mr. Harding, president of the Associated General Contractors, definitely stated that his association has no labor policy; that, if a contractor desires to operate under either a union or nonunion condition, that is his business; but the bulk of the membership of the Associated General Contractors are engaged in anything but the construction of buildings in which this bill, so far as the building trades organizations are concerned, is interested.

Mr. WELCH. My particular purpose in asking the question is that, during the time the prevailing rate of wage law was before this committee, I received a number of telegrams from contractors in and around the San Francisco Bay area; and I have reason to know, as you have, that many of them were very fair to organized labor, so much so that many of them were involved in serious trouble. You will recall that there was a period when the so-called American plan——

Mr. MCDONOUGH (interposing). The nonunion plan.

Mr. WELCH. Many of those men sent telegrams favoring the predetermination clause in the prevailing rate of wages bill reported out by this committee and passed by the Congress at the last session.

Mr. MCDONOUGH. That is the present law.

Mr. WELCH. Yes.

Mr. MCDONOUGH. But it does not contain the element of predetermination.

Mr. WELCH. No; I know that; but I am just saying that many contractors known to me as being fair to labor were in favor of that clause at that time.

Mr. MCDONOUGH. That is my contention—that there has been no advocacy of the passage of this bill by the bulk of contractors in the building industry. It is true that the Association of General Contractors are advocating this bill. But are there any other like organizations urging the passage of this bill? How do the plastering contractors stand; how do the plumbing contractors stand; how do the bricklaying contractors stand; how do the electrical contractors stand; how do the steam-fitting contractors stand? Are they advocating the passage of this bill? If they are, it is news to me. I believe, so far as the building trades organizations are concerned at the present time, that we are as a unit in opposition to this bill. On the other hand, I think I can prove conclusively that the contracting units as a whole are not advocating it, while the Associated General Contractors are advocating it, but the latter organization does not represent the building industry in its entirety in this country. I think that is evident. It is my opinion that the committee is laboring under the misapprehension that the Associated General Contractors represent the whole group. You will find, if you investigate, that there is no coordination between the two groups for the reason at least it is evident that general contractors as a whole are opposed to the legislation and that the other groups are interested in it. That is an important consideration that I want to leave here.

Mr. WELCH. I have not received communications from any source in relation to this bill, either for or against it. I do not know the experience of other members of the committee in this respect.

Mr. MCDONOUGH. Another point I want to clear up is President Green's position. Mr. Green must have gotten the impression that this bill dealt with building-trades organizations and therefore, in his judgment, he probably felt that it might be a good thing; but after he had time to think it over, and considering the opposition to it from the departments affiliated with the American Federation, such as the metal trades, the electricians, the bricklayers, the carpenters, after he had time to study the bill, he, as Mr. Connery has suggested, changed his mind. I just want to leave that thought with the committee, because, at that meeting, the representatives of the building-trades groups only were present.

In my opinion, the bill in its present form is very complicated and goes much farther than the ordinary observer would realize, and, if enacted into law, would require a great deal of machinery to make it function. If there is a predetermination of wages, why the necessity for setting up an agency to have a meeting, we will say, every three months to ascertain whether there has been an increase or decrease in the rate of wages. If the rate of wages is predetermined, why the necessity for such a course? If it is decided that the rate of wages in the erection of a building, say, in Washington shall be a certain amount—if that is the law—we as members of the building trades organizations would be obligated to complete the job with the predetermined rate of wages without an increase in wages. Why should there be any such set-up as this?

Mr. RAMSPECK. Let us take the House Office Building, just across the street, for example. They have been working on it for practically three years. Suppose conditions had been reversed and the cost of labor had gone up materially instead of declining; do you not think the contractor should be protected? You know your men would not continue to work for, say, $6 a day if somebody else offered them $10 a day.

Mr. MCDONOUGH. If the rate of wages were predetermined in a manner provided by this pending bill, our people would be obligated to complete the building under those conditions, and in many parts of the country that has been the practice of the organized building tradesmen. Where there was an increase in the rate of wages our men had to complete the pending work under the existing—the then existing—scale. That has been done in most parts of the country.

Mr. RAMSPECK. Would it be fair to the mechanics and laborers working on a job like that to tie them to a wage scale for a period of three years?

Mr. MCDONOUGH. It does not often happen that one job lasts three years. With our present economic conditions we are not confronted by the probability of an increase in wages, and that complicates the bill.

The CHAIRMAN. What you say is obviously wrong, because that takes care of a proposition if the wages go up, in which case the contractor would be reimbursed.

Mr. MCDONOUGH. If the rate of wages is predetermined that rate should be the rate for the job to completion.

The CHAIRMAN. Do you maintain that if wages went up, say, three dollars a day, labor should work for the old rate?

Mr. MCDONOUGH. I do not think that we are confronted with the prospect of any such condition.

The CHAIRMAN. Wages could possibly go up very quickly. If we should have a return of prosperous times and have a building boom, wages would go up very materially, I hope.

Mr. MCDONOUGH. At the present time the general contractor does less than 10 per cent of the actual work on the job. I do not know whether you Congressmen are aware of that or not. In most instances the general contractor is only a broker. He gets plans from a Governmental department, submits those plans to subcontractors, who submit bids to him, and from the bids so submitted he formulates his estimates and presents them to the governmental department inviting bids. That is how that matter works out in practice.

The CHAIRMAN. This takes care of the subcontractors also.

Mr. MCDONOUGH. Yes.

Mr. GRISWOLD. And, moreover, after that the general contractor peddles his bids.

Mr. MCDONOUGH. Yes. That is being done and it is being done more generally than ever. A legitimate subcontractor submits bids to the general contractor and, after the general contractor gets the award of contract, he further peddles the bids. He may say to one subcontractor, "I have a bid of $140,000 for the brick work on this job; will you do the work for $135,000?" The result is that the only way many subcontractors can obtain work is by taking advantage of labor in meeting these unfair practices.

The other day before this committee a gentlemen representing the surety and bonding companies stated that it was harder to get a surety company to write a bond now. There is a reason for that. Prior to the enactment of the Davis-Bacon law the surety companies were writing bonds for any Tom, Dick, or Harry and as a result they suffered some very severe losses. One of the largest buildings in Washington, for which the contractor submitted a very low bid, was surrendered by the contractor and had to be completed by the surety company.

That is being done in many sections of the country. I have talked with representatives of the Associated General Contractors, and they have been and are much opposed to the leniency of the surety companies in writing bonds for contractors doing work for the Government at the present time. One gentleman told this committee recently that with the present Savis-Bacon law there would be a limitation of bidders. I would suggest that the committee ascertain from the various departments of the Government doing construction work the number of contractors submitting bids on Government construction. You would find that the bids on Government work are now more numerous than they have been at any time in the history of the Government.

Mr. RAMSPECK. Is that not due to the fact that Government work is the only work they now get a chance to bid on?

Mr. MCDONOUGH. That is one reason. They wanted to tell the committee that you would have less bidding for this Government work. I don't want to take up further time of the committee, but in closing I do want to say that the executive council of the building trades department of the American Federation of Labor, after thorough and complete consideration of the question of predetermining rates of wages, is unalterably opposed to predetermination. We feel that the existing Davis-Bacon law, buttressed by the Executive order, should be given an opportunity to fully function. If within the next year the Davis-Bacon law and the Executive order do not do what we laboring people feel they will do, I assure you that, so far as we are concerned, we will be here asking for legislation to take the place of them. But, as I have said, we feel that the law and the Executive order should be given a fair trial

The CHAIRMAN. If the building trades department of the American Federation of Labor had not promised Secretary Doak that you would be against this legislation, would your organization still be against predetermination of the rate of wages?

Mr. MCDONOUGH. If the Executive order had not been issued, and I think the records will bear me out in this, I stated we would be in accord with the legislation. Repeating one of my last statements—if, after giving the Davis-Bacon law and the Executive order a further trial, they do not do what we anticipate they will do, we will be here asking for further legislation; but, in fairness to that law and that Executive order, it must be said that we do not think they have been given a fair and thorough trial. The Executive order has not had an opportunity to function, in that bids invited up to the time of the issuance of the Executive order are not affected by that order. We have been doing the best possible. We did the best we could to get legislation that would favorably supplement the Davis-Bacon Act, and in talking with the Secretary of Labor, feeling that his good offices were instrumental in bringing about the issuance of the Executive order, we assured the Secretary that we would go along and give the Davis-Bacon Law and the Executive order a fair trial, and if they did not work out we would be before the committee asking for proper legislation.

So far as the President is concerned, at no time did we have any agreement with Mr. Hoover with reference to this legislation. Any negotiations between the building trades departments of the American Federation of Labor and the Department of Labor were between the officials of those agencies.

Mr. WELCH. Is it your understanding, Mr. Chairman, that the Secretary of Labor is opposed to this pending bill?

The CHAIRMAN. I think he is.

Mr. MCDONOUGH. The record will bear that out. When Mr. Doak appeared before the committee at the time the President's order was issued, he said he was opposed to a predetermination of the rate of wages.

The CHAIRMAN. I do not think he said that; but he did say that he did not want any further legislation.

Mr. WELCH. The prevailing rate of wages law went into effect July of last year.

Mr. MCDONOUGH. No; it was passed on or about March 2 and it became effective 30 days thereafter.

Mr. WELCH. Yes; I meant to say April 1 or 2, 1931.

Mr. McDONOUGH. Yes.

Mr. WELCH. Have you knowledge of any contractor of contractors who were awarded contracts on Government buildings subsequent to the time the prevailing rates of wages act went into force and effect and who bid on the job at the prevailing rate of wages of that time, as provided in that act, and have since that time taken advantage of labor conditions and lowered the wage scale paid their artisans and laborers on such buildings?

Mr. McDONOUGH. I know of many such cases. I have two complaints along that line received this morning, one from High Point, N. C., and the other from Greensboro, N. C.

Mr. WELCH. In other words, when the contractors bid on these jobs they figured in accordance with the prevailing rate of wages as provided for under the Davis-Bacon Act?

Mr. McDONOUGH. Yes.

Mr. WELCH. But subsequently they have reduced the scale of wages below that which prevailed at the time they calculated on the job. If they have, in a word, they are the beneficiaries of any reductions made under the scale they figured on at the time of getting the contracts.

Mr. McDONOUGH. As stated before, there is a certain group of contractors, and I could mention them by name—such as the Barnes Co., the Stanford Co., the Rose Co., and the Algernon-Blair Co., and many others—who are doing work for the Government and under the present law taking advantage of labor conditions and reducing wages. Through the efforts of representatives of labor we have placed before the Secretary of Labor innumerable protests against this practice and the cooperation of the Secretary of Labor, I am happy to say, has been and is 100 per cent.

Mr. WELCH. In short, such contractors are paying less wages than they calculated when they took the jobs.

Mr. McDONOUGH. Yes. I am calling attention to violators of the law.

The CHAIRMAN. If I may interrupt, it is now 11.45 o'clock and we should like to receive as soon as practicable a statement from Mr. Hushing, after which we can go back to you. Will you please yield at this time briefly?

Mr. McDONOUGH. Certainly.

STATEMENT OF WILLIAM C. HUSHING, LEGISLATIVE REPRESENTATIVE OF THE AMERICAN FEDERATION OF LABOR, WASHINGTON, D. C.

The CHAIRMAN. Let us now hear Mr. Hushing.

Mr. HUSHING. Mr. Chairman and members of the committee, I did not expect to appear here this morning, as President Green of the American Federation of Labor was to appear. However, he found it impossible to come and he authorized and directed me to say in his name that he stands squarely behind the several departments and organizations of the American Federation of Labor, in line with the long-established policy of the federation. You are all familiar with the stand of the several departments and the affiliated organizations of the federation, as given before the committee; and I now wish to place the American Federation behind these organizations.

The CHAIRMAN. As against the Metcalf and the Connery bills?

Mr. HUSHING. Yes.

The CHAIRMAN. Mr. McDonough, will you please continue.

Mr. McDONOUGH. Since the Chicago, Ill., post-office contract was awarded there has been a reduction in the rate of wages.

Mr. WELCH. Was the award made since the so-called Davis-Bacon Act went into force and effect?

Mr. McDONOUGH. Yes. In Chicago they are observing the prevailing rate of wages, though, generally. In Chicago the building-trades workers have accepted a reduction in wages.

Mr. WELCH. And the contractor is the beneficiary of any reductions he may make in wages. I do not see why he should be. I think the artisans and the United States Government should be the beneficiaries.

Mr. McDONOUGH. An example has just been handed to me, and I will read one paragraph from it, which is a letter. It says:

> This man Myers seems to think that he is bigger than the United States Government. He seems to be able to ignore all decisions handed down from the Department of Labor. This man will have to be forced to pay, as you can see his word is worth nothing. He promised to abide by the decision. If we had lost, we could have taken our $8 and forgotten about it. Why can't we stop this job with a Federal injunction? He is ignoring a Government order and a Federal injunction always works for the contractor. Why won't it work both ways?

A decision was rendered in the case of that man, yet he ignored it, because the job was let prior to the issuance of the Executive order. If it had not been let at that time, if the Executive order had been in effect, the department involved could cancel the contractor. There is a penalty involved, but this fellow is evading the law. The same group of contractors who are now evading the law and keeping us busy checking up on them would cause the same trouble under a predetermined rate of wages.

Mr. WELCH. Is there much difference in the price of material between the time they bid on the jobs and the present price of materials?

Mr. McDONOUGH. I can't say but what, so far as the contractors are concerned, the only chance they have of taking any advantage of the material men is to buy the material and not pay for it. If the price of sand is $1.10 a ton, the price of brick $40 a thousand, the price of plaster $13 a ton, the contractors are obliged to pay those rates for the material; but if the rate is $13 a day for bricklayers and plasterers, these contractors take advantage of the labor conditions. The difference between the material men and the workmen is that the material men have recourse to law for collection of debt, while our situation is a little more difficult.

Mr. GRISWOLD. As I understand, you desire to give this Executive order a chance to prove itself?

Mr. McDONOUGH. Yes.

Mr. GRISWOLD. Have you any complaints against the Barnes Construction Co.?

Mr. McDONOUGH. Yes; it is working on a Federal job at South Bend, Ind.

Mr. GRISWOLD. And that contract was made since this Executive order was issued?

Mr. LANE. The Executive order says that it shall not affect jobs for which invitations for bids had gone out when it was issued.

Mr. GRISWOLD. You know the conditions with the Barnes Construction Co. It is one of the most reprehensive concerns in the country; and still it goes ahead on this work.

Mr. MCDONOUGH. Every construction job the Barnes Co. has with the Government affords the most abominable conditions for the workmen on the job. On the South Bend post-office job the non-union ironworkers did their work in December, yet they have not yet been paid. However, I do not know whether that is chargeable to the Barnes Co. or a subcontractor.

Mr. GRISWOLD. He peddles his bids?

Mr. MCDONOUGH. Yes.

I thank you for the opportunity of speaking this morning.

The CHAIRMAN. We are glad to have you with us.

Mr. MCDONOUGH. I made the statement before the committee that I was protesting against the bill and I did not want politics to enter into its consideration. I may now say that this man Barnes is a county committeeman of the Republican Party and comes from Logansport, Ind.

Mr. GALLAGHER. I have an illustration of the matter that Mr. McDonough, president of the building trades department of the American Federation of Labor, was speaking about. Here [indicating] is a Veterans' Bureau job at Lake City, Fla., that has been going on quite awhile. The painting is now being started. The Government superintendent on the job, who is from the Veterans' Bureau, made an investigation as to the rate of wages prevailing in Florida, and among those rates were the painters' rates; and after a thorough investigation it was determined that 75 cents an hour was the prevailing rate for painters. That is the decision of a Government man and the decision is approved by the Department of Labor, and they are paying from 40 to 60 cents an hour for painting on that job.

Mr. RAMSPECK. What can we do about it under present law?

Mr. GALLAGHER. They are doing that and they will keep on doing it until we crucify or shoot them.

Mr. RAMSPECK. What can we do about it under present law?

Mr. GALLAGHER. Let us name the subcontractor when the general contract is awarded.

Mr. RAMSPECK. You do not answer my question or I did not make myself clear. What can we do to make him pay the proper wage under present law?

Mr. GALLAGHER. The Executive order ought to take care of it. There is no question about it. Mr. Lane spoke about a Federal job at Barksdale, La., air field, the job for painting which was let to one of the worst, most notorious, unfair firms in the country. I protested to General Bash, of the Quartermaster Corps of the Army, in charge of War Department construction work, and eventually the contractor was thrown off the job in accordance with the provisions of the Executive order.

Mr. RAMSPECK. You can do that under the Senate bill. In addition to that, we may charge him $10 a day for failing to pay the prevailing rate of wages.

Mr. GALLAGHER. I am a lone individual here sacrificing, in a sense, unless something is done later on, every opportunity the members

of my organization have. I am sacrificing by the opposition to this Metcalf bill and the Connery bill an opportunity to cut them down from $5,000 to $500, because, if this bill is reported negatively by this committee, I am simply out of luck and so are the members of my organization. My people will not get any work on these post offices, because these jobs average from $800 to $2,200, all being below the $5,000 limit. That means that the law is not applicable to those jobs. You all know that the Comptroller General has ruled that painting of an existing public building is not affected by the provisions of the Davis-Bacon law or the Executive order we have in mind. Where do we stand; and yet I am here opposing this bill and sacrificing the opportunities of our organization?

Mr. RAMSPECK. That is what I am unable to understand.

Mr. GALLAGHER. It has been asked, since I testified, what we were doing before the Executive order was issued. It is a well known fact among some of us that we were busy trying to have inserted in the bill a provision that would force these contractors and subcontractors to abide by the law and live up to the specifications; but the efforts we are interested in resulted in the heads of departments getting together and asking us to lay off until January 19, 1932, and we did lay off, and I laid off at the expense of our membership. Our men do not get a chance on any old post-office jobs or on any old jobs of the Veterans' Bureau, and yet one job now under way amounts to $20,000.

Mr. RAMSPECK. Are you asking this committee to penalize your members——

Mr. GALLAGHER (interposing). I contend that the predetermination or setting up of these wages prior to the letting of the contract is not workable. It can not be done. The question was asked Mr. Frye yesterday regarding shipbuilding. How could this set up a rate of wages for shipbuilders when nobody knows at what shipyard or shipyards the ships may be built?

Mr. KOPP. You gave an example of a contractor being unfair. If we had the requirement of predetermination of the rate of wages in the specification, would he not be compelled to be fair or see the contract go to a fair contractor?

Mr. GALLAGHER. It is inconceivable that I should take the position I am taking at the sacrifice of our own members.

I don't know how these contracts are let.

Mr. KOPP. To the lowest responsible bidder.

Mr. GALLAGHER. The law requires that a contract be let to "the lowest responsible bidder," and until you define the word "responsible" we are always going to have trouble. "Responsible bidder" in the eyes of the different departmental heads means anybody who can get a performance bond. It doesn't mean anything more in their eyes.

STATEMENT OF W. A. CALVIN, VICE PRESIDENT OF THE INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, WELDERS, AND HELPERS OF AMERICA, JACKSONVILLE, FLA.

The CHAIRMAN. We should like to hear from Mr. Calvin, who has to leave very soon.

Mr. CALVIN. I have been called home by serious illness and probably will be gone more than a week.

The CHAIRMAN. The chairman did not understand that, else he would have called you sooner.

Mr. CALVIN. As vice president of the International Brotherhood of Boilermakers, Iron Shipbuilders, Welders, and Helpers of America, I want to register my opposition to this bill. For the information of the committee I will say that I come from a section of the country where the worker has been violently and viciously outraged and exploited.

Mr. RAMSPECK. Under the present law?

Mr. CALVIN. Under present law. I refer to the South. If I could see anything in the proposed law to emancipate or relieve the oppression of the workers in the South, you may rest assured that I would be body and soul for the bill; but I can not see how the proposal would effect any improvement. I am afraid of the proposed law and as a representative of boilermakers and other trades mentioned, I want to be recorded as opposing the passage of this bill.

Mr. GRISWOLD. You want to go ahead under the Executive order?

Mr. CALVIN. I prefer it to the proposed bill.

Mr. WELCH. You are in accord with Mr. Frye with reference to shipbuilding?

Mr. CALVIN. Yes, sir.

Mr. FRYE. I made it clear that I was unwilling to discuss the principle involved in the bill or to make any comment concerning what might be the attitude of the building trades departments, because I was interested at the time specifically in what was purely a metal-trades matter. Now that the building trades have expressed their opinions, as a representative of the metal trades department of the American Federation of Labor I want to say that we are thoroughly and completely in accord with the position the building trades have taken here this morning.

The CHAIRMAN. If they had not made the agreement with Secretary Doak, would you still be here opposing the predetermining of wages and this bill?

Mr. CALVIN. Unless an Executive order had been issued and it was the belief of the representatives of organized labor that the Executive order would make the law function as we want it to function. I would not be in favor of any bill in the form of the one you are now considering.

The CHAIRMAN. What position would you take if the building trades had not made an agreement with Secretary Doak?

Mr. CALVIN. I would be against the predetermination of a wage scale.

The CHAIRMAN. If they had not made that agreement with Secretary Doak?

Mr. CALVIN. Yes.

Mr. RAMSPECK. What does predetermination of a rate of wages take from the laboring man that he enjoys under the present law? What right, benefit or privilege would be taken from the mechanic or the laborer by a predetermination of the rate of wages as compared with the present system?

Mr. CALVIN. The fundamental principle of the right of collective bargaining is involved.

Mr. RAMSPECK. How is that more affected by a predetermination?

Mr. CALVIN. There is considerable difference between a predetermination of wages and a postdetermination of wages. The bill as proposed is unworkable and fundamentally unsound.

Mr. RAMSPECK. But that is a general statement.

Mr. CALVIN. My colleagues have covered the ground of opposition very thoroughly. I have my opinion relative to it and I am inclined to believe that a predetermination of wages would react very unfavorably, and the probability is that it would. It certainly could react unfavorably to our cause. It would place too much power in one man's hand. It would give him too much authority.

Mr. RAMSPECK. It places no more power in the hands of the Secretary of Labor. We are simply changing the time when he shall exercise the same power.

Mr. CALVIN. The Secretary of Labor now exercises the power when a dispute arises on a contract. If I were bidding on a big job I do not think I would have any difficulty determining what the rate of wages was in a particular community or vicinity where I expected to erect a job and bid on it. Any contractor may accurately and definitely acquire that information either by investigation on his own account or by calling upon the Secretary of Labor for the information.

The CHAIRMAN. If this committee should see fit after these hearings to support the Connery bill or the Metcalf bill, you could not justifiably accuse this committee of being unfriendly to labor after knowing before the Executive order came out that the building trades had made an agreement with the Secretary of Labor and before they made that agreement they were in favor of a predetermination of the rate of wages.

Mr. MCDONOUGH. I do not think that I, as a representative of the building-trades department of the American Federation of Labor, went on record as being in favor of a predetermination of a rate of wages. I believe the record will bear out this statement.

From the viewpoint of the workers, under the present law, if there is a predetermination of the rates of wages, so far as the contractor is concerned he has not anything to lose, but we as representatives of labor have something to lose for the reason that governments change and we do not know what the future holds. So far as I am concerned, I am willing to take my chances with the present Secretary of Labor; and it is possible that I may be able to take my chances with a future Secretary of Labor. However, we all know that it is the ambition of many men in the country to be a member of the President's Cabinet and many men who are not in accord with the viewpoint of organized labor would be just as highly honored if they were Secretary of Labor as if they were, say, Secretary of War. To-day we have no complaint against any Secretary of Labor, but, assuming that a future Secretary of Labor had the matter of predetermining a rate of wages within his power——

The CHAIRMAN (interposing). You can not imagine any President of the United States selecting a Secretary of Labor who did not have the endorsement of labor in the United States. We have had three secretaries of labor, namely, Mr. Wilson, Mr. Davis, and Mr. Doak and all have been satisfactory to labor.

Mr. MCDONOUGH. My argument is that labor is taking all the chances. Presuming that a satisfactory Secretary of Labor is appointed, he might have a change of heart.

Under the theory of predetermination of wages the contractor takes no chance. If the rate of wages is $2 or $14, if his argument is sound, he figures accordingly.

Mr. KOPP. Do you not take a chance with the Secretary of Labor under the Executive order?

Mr. MCDONOUGH. Yes; and we are willing to take it.

But on a predetermination of a rate of wages we are taking the chances. The contractor is not taking any chances, because if there is a predetermination of the rate of wages he calculates accordingly. We are willing to take our chance.

Mr. GRISWOLD. Is it not true that, under the present system, it is the policy of the building trades and the central labor trades in the various localities to predetermine wages to the extent that they make contracts in advance as to what the wage scale shall be for that particular locality?

Mr. CALVIN. Yes. In answer to the chairman's question as to what my reaction would be to favorably reporting this bill, I think I owe it to the committee, as a representative of labor, to say that anything coming out of your committee will be the result of careful consideration and due to the fact that the committee, as always, has been actuated by a desire to do something in a constructive manner to relieve and better labor conditions. I have that confidence in the committee, having seen it function for three months. I am confused at why there should be so much demand for a predetermination of a rate of wages. I have heard contractors say here that they were and are paying in excess of the prevailing rate of wages, because they did not think labor was getting enough. If that is true, why was a prevailing rate of wages law necessary? If that be true, why was it necessary to have an Executive order to enforce the provisions of the Davis-Bacon Act. I say that you have heard misrepresentations from that source.

The CHAIRMAN. The contractors claim this—when a reputable contractor, paying union wages, goes in to bid on, say, a post office, he wants to know the conditions of the contract, he wants a fair chance in the bidding, and not against an unfair bidder who has made a deal with subcontractors to pay $8 or $10 a day and therefore can under bid him.

Mr. CALVIN. The reliable and responsible contractors are not making a hue and cry of the adoption of this measure. I am inclined to wonder why——

The CHAIRMAN (interposing). Perhaps they have given up hope of getting a Government contract under present conditions.

Mr. CALVIN. If these contractors are so eminently fair and are paying in excess of the prevailing rate of wages, I do not see any reason why further legislation should be necessary; and I think that Congress should be devoting more time to relieving the suffering of millions of people who are starving rather than waste time in the consideration of unnecessary legislation.

The CHAIRMAN. Since you are now talking about the committee, I want to say that this is the only committee in Congress that has reported out a bill for the relief of the very people concerning whom you speak.

Mr. CALVIN. Yes; that is true. I am disgusted with the violators of the present law. Mr. Powell, a member of their organization, went to New Orleans on a boiler job and stated to the contractor that the prevailing rate of wages law as a joke, regardless of the fact that the act had been strengthened by the Executive order we have in mind.

The CHAIRMAN. I would say, after listening to all members of the building trades, that it is my belief that all statements made here are the best and finest arguments for a predetermination of the rate of wages. Every statement every representative of labor has made here is that the present law is a failure so far as justice to labor is concerned.

Mr. CALVIN. And this proposed measure would be a failure. Let us give the Davis-Bacon Act and the Executive order an opportunity to prove whether or not they are good and effective. Let those prove whether the Davis-Bacon Act is enforceable.

The CHAIRMAN. The Executive order has been in force for about three months; and Mr. Gallagher has just shown me a letter concerning a Florida hospital, in connection with which the Secretary of Labor has set the rate of wages but the contractor says he will not pay it. Therefore, what good is the present law?

Mr. CALVIN. The persons who have made this legislation necessary are the sponsors of this bill and we accept anything coming from that particular source with considerable caution.

Mr. RAMSPECK. That is not exact, is it? Your own witness stated here that the members of the Associated General Contractors rarely construct buildings. Is the Algernon-Blair Co. a member of that organization?

Mr. CALVIN. It obtained contracts and subcontracts. I think that is the point our representative wanted to prove. They accepted contracts and placed bids on general contract work but they did not do the work. They sublet the contracts to subcontractors and obtain their contracts through bids.

Mr. KOPP. Under the present system does not the unfair contractor have an advantage over the fair contractor?

Mr. CALVIN. I can not see it that way.

Mr. KOOP. Does not the unfair contractor cut wages to increase his own profits?

Mr. CALVIN. There is machinery to cope with that.

The CHAIRMAN. What machinery is there?

Mr. CALVIN. The Department of Labor, the Executive order we have in mind, and the conciliation service.

Mr. KOOP. Has everything worked out satisfactorily?

Mr. CALVIN. Not everything; no, sir. The Davis-Bacon Act has improved labor conditions, and while the Executive order of last January has strengthened that law, conditions for the working people could still be materially improved.

Mr. RAMSPECK. And if we think we can improve them by this proposed measure, we ought to pass it.

Mr. CALVIN. But I do not think you can.

Mr. RAMSPECK. You admit that the present law effected an improvement?

Mr. CALVIN. Yes; but there is always room for improvement of the condition of working people. If you will study the history of industry you will find that——

Mr. WELCH (interposing). This session will linger for another month or possibly longer, and the Senate——

The CHAIRMAN. Mr. Calvin, as I have stated, if it had been known that you are about to leave the city, you would have been called earlier.

Mr. WELCH. Why is it not within the power and authority of this committee to summon before this Committee on Labor, the contractors who are violating not only the letter but the spirit of the prevailing rate of wages law and ascertain from them why they insist upon doing it? It has been stated here to-day that one contractor would be the beneficiary to the extent of about $90,000 by reason of the reduction in the rate of wages between the time he bid in a contract under the Davis-Bacon Act and the present scale. I think those people should be brought here to explain.

The law provides that the contractors shall pay the prevailing rate of wages in the community wherein the construction is going on. Those of us who supported the bill did not anticipate a let-down of the rate of pay and that contractors would avail themselves of that and deny to the artisans and laborers the full benefit given to them.

Mr. MCDONOUGH. In the contract awarded is included the Executive order and if the contractor violates that he violates a contract and that is different from violating the law.

Mr. WELCH. The Davis-Bacon Act is written into the contract and the contractor agrees to the payment of the prevailing rate of wages. And the same is true of material. If the contractors contract for material and bid on the job in accordance with the prevailing cost of materials, they pay the material men the price agreed upon, but these contractors do not refund to the Government or give the laboring men any benefit. We should like to know why.

Mr. CALVIN. I have nothing further to say.

The CHAIRMAN. If the gentleman has nothing further to tell the committee, and there are no further questions by members of the committee, let us adjourn to meet to-morrow morning at 10 o'clock.

(Thereupon at 12.45 o'clock p. m., on Wednesday, May 11, 1932, the committee adjourned, to meet to-morrow at 10 o'clock a. m.)

REGULATION OF WAGES PAID TO EMPLOYEES BY CONTRACTORS AWARDED GOVERNMENT BUILDING CONTRACTS

THURSDAY, MAY 12, 1932

HOUSE OF REPRESENTATIVES,
COMMITTEE ON LABOR,
Washington, D. C.

The committee this day met at 10 o'clock a. m., Hon. William P. Connery, jr., chairman, presiding, for further consideration of S. 3847, which is an act to amend the act approved March 3, 1931, relating to the rate of wages for laborers and mechanics employed by contractors and subcontractors on public buildings.

STATEMENT OF HON. VICTOR S. K. HOUSTON, THE DELEGATE IN CONGRESS FROM THE TERRITORY OF HAWAII

The CHAIRMAN. The first witness this morning is Mr. Houston, the Delegate in Congress from the Territory of Hawaii.

Mr. HOUSTON. I will take only two or three minutes. I am not going to discuss either the merits or the demerits of the proposed legislation, because I am not sufficiently familiar with the merits of it.

I appear to ask that in such action as is taken that it may be inclusive of the incorporated Territories of the United States; and to that end I suggest that on page 2, line 3, after the word "State" there be inserted the words "or territories"; on page 3, line 3, after the word "State" there be inserted "or Territories"; and on page 5, line 25, after the word "State" insert a comma and the word "Territories", in order that you may be perfectly clear about the matter. You may recall that some time ago I appeared before your committee and requested that the word "Territories" be removed from a part of the bill, but that is altogether a different subject. The bill then under consideration was one which would have provided Federal control for Federal projects, State projects, and District of Columbia projects. In that instance I requested that the word "Territories" be removed so that we might control our own projects for which we ourselves provide funds. This refers to Federal projects in the United States and the District of Columbia and therefore it should apply to the Territories also.

The CHAIRMAN. You asked me about the Lewis bill, which we reported. We had the word "Territories" in that.

Mr. HOUSTON. Yes; that was arranged satisfactorily. It was merely that there should not be any Federal control over strictly territorial projects within the Territories. We should like to place ourselves under the same rigid control that the States are placed under.

That is all I have to say.

The CHAIRMAN. We thank you very much.

STATEMENT OF N. F. ALIFAS, LEGISLATIVE REPRESENTATIVE OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS

The CHAIRMAN. Let us next hear Mr. N. F. Alifas, legislative representative of the International Association of Machinists.

Mr. ALIFAS. I am legislative representative of the International Association of Machinists and also serve as chairman of the legislative group representing the metal trades department of the American Federation of Labor.

I desire to appear this monring in opposition to the Metcalf bill, and, for the information of the committee, perhaps I should explain some of the circumstances under which we have been manuevered into the position of being compelled to take an apparently false position on this question of the desirability of a prevailing rate of wages as a general principle.

Mr. LOVETTE. You object particularly to the predetermination of wages, do you not?

Mr. ALIFAS. We object to that in particular on account of the way the whole proposition is hooked up. When the Davis-Bacon Act was passed it was to apply to the building trades only. The bill had to be passed as introduced. We practically had no choice. At that time the building trades were well organized. They had what might be called a prevailing rate of wages throughout the country. That was a definite situation. They had one rate of pay in each city for each trade. It was fairly uniform and therefore it could be said that they had a prevailing rate of wages as a measuring scale.

At the American Federation of Labor convention at Vancouver, to which I was a delegate, it was proposed to apply this same prevailing rate of wages principle to lines of work such as rivers and harbor and shopwork, and the like; while in that division of industry there is no such specific prevailing rate of wages. It is a matter of judgment in this division of industry as to what actually constitutes the prevailing rate of wages. In many trades the rates run from far down the scale upward to, say, $1.50 an hour. Therefore in trying to say what the prevailing rate of wages is in that field, we have not the safe and sound measuring stick that the building trades have.

At the present time there is a downward tendency in the matter of wages. I do not think that is a secret to anybody; and if we insist upon adopting the prevailing rate of wages, whether predetermined or otherwise, it will amount to requesting an arrangement that will result in a progressively lower rate of wages.

The CHAIRMAN. Why do you say that, when this proposed legislation provides that this very subject may come up for reconsideration every three months?

Mr. ALIFAS. Unless something is done to stimulate industry—and we do hope that something is done before the Congress adjourns—there is likely to be a further downward trend of wages, and the fact that the question may be reopened every three months may of itself lead to a continuing lower scale of wages being put into effect. As Mr. Fursueth said here the other day, industry, especially that which is unorganized, tries to obtain labor for less than the prevailing rate of wages. Therefore, if a prevailing rate of wages were set, which might be the average prevailing rate, those paying about that scale would

attempt to come down to the average, and those paying below the average of the scale will try to go even lower. It might easily amount to an arrangement whereby we would be inviting a lowering of the national scale of wages. If we had a hitching post, or a minimum scale of wages or some definite standard to go by it would be different. Suppose you said that the building trades rate should be considered as the prevailing rate of some fixed period in the past when it was satisfactory, and that such should be the determining factor? Then you would be upholding wages.

Mr. LOVETTE. But when one goes to make a contract he ascertains the wages he will have to pay.

Mr. ALIFAS. Yes.

Mr. LOVETTE. And, on the other hand, the wage earner wants to know what he is going to get.

Mr. ALIFAS. Yes.

Mr. LOVETTE. Both the contractor and the wage earner want to know the wages to be paid.

Mr. ALIFAS. Yes.

Mr. LOVETTE. They agree upon the wage to be paid before the work starts, naturally.

Mr. ALIFAS. I do not think that has been the practice of the past.

Mr. LOVETTE. No contractor would start a project without knowing what he had to pay for workers, if he is a good business man.

Mr. ALIFAS. He would want to know himself, but that does not mean he will have to have reached an agreement.

Mr. LOVETTE. He himself must know the wages he is to pay.

Mr. ALIFAS. Yes.

Mr. LOVETTE. And the workers must know what they are going to receive and they must know that before they start work.

Mr. ALIFAS. Yes.

Mr. LOVETTE. Before the project starts the matter of wages is always determined.

Mr. ALIFAS. Yes.

Mr. LOVETTE. If the item of wages has to be predetermined, what is the objection to put the rate in the contract itself?

Mr. ALIFAS. As a rule when a contractor bids on a job, the first labor knows about it is after the specifications have been prepared. We see advertisements in the newspaper and journals that the Government wants certain work performed, for instance. Up to that date that has been about the first intimation we have had of any such such work being undertaken. That is where we have been stepping into the picture; but if we go back of that, it is going to be more difficult for us to know just what work is going to be undertaken. At the present time when a contractor has a job he undertakes to employ the necessary personnel and perhaps he inquires as to what the scale of wages is, if he is a union contractor.

Mr. LOVETTE. "Perhaps," or does he actually inquire, if he is a good business man?

Mr. ALIFAS. He inquires as to what the scale of wages is; but when he employs men that is the time he makes the wage bargain. When workers are on the job they are in position to complain; but we feel that if the rate of wages is predetermined, organized labor as such might not be recognized in attempting to set the scale of wages to cover a job upon which work has not started.

The CHAIRMAN. Why do you say that, in view of your favorable experiences with the Secretaries of Labor. No President of the United States, unless out of his senses, is going to appoint a Secretary of Labor who is not indorsed by labor. Where is the danger from the Secretary of Labor?

Mr. ALIFAS. I am not so sure of the first part of that.

Mr. LOVETTE. I do not know whether you get my question clearly; but I am interested in this proposition and I want to find out about it. What I have in mind is true regardless of what anybody may say. Before a contractor begins work on a project he knows what he is going to pay his workers and his workers know what they are to receive. Their minds meet on that question.

Mr. ALIFAS. The laborer knows what he is going to get before he starts to work, yes.

Mr. LOVETTE. If that is true, and it is always true, then I want to know the objection to writing the truth and the fact and the status of the two parties, who have gotten together and agreed upon the rate of wages, into the contract itself. If there is any deleterious effect flowing to labor from that, I should like very much to know what it is. I want to know what harm such a procedure would visit upon anybody, since it would settle once for all any argument on that particular contract. If you can answer that question, you will help me a great deal.

Mr. ALIFAS. I shall try to explain it in my own way as I see it. In the first place the question is coupled with what the chairman has said about the Secretary of Labor probably always being acceptable to labor.

Mr. LOVETTE. As the law is, if there is a dispute it has to go to the Secretary of Labor for determination.

Mr. ALIFAS. Yes.

Mr. LOVETTE. And that is satisfactory, is it not?

Mr. ALIFAS. Yes; it is satisfactory if the other factor is satisfactory.

Predetermining wages would place labor in a most difficult position, because, as stated, in the first place, up to date, the first that we learn of the existence of a contract is after the specifications have been written. Before that time it usually is a matter between the contractor and the Government. They get together first, and we fear that under this bill we might be left out of the picture until it would be too late to have something to say about it.

The CHAIRMAN. How do you reach that conclusion?

Mr. ALIFAS. Suppose a contractor is using workers who are not members of organized labor. What reason would he or the Government have to let organized labor step in and help fix the rate of wages. Organized labor would not be in the picture and would have nothing to do with it, because its members would not be employed. The organizations can not intervene unless they represent somebody actually on the job.

The CHAIRMAN. How does the Secretary of Labor set the rate of wages now when the dispute comes up in connection with an unorganized concern?

Mr. ALIFAS. All contracts are not now taken up. It is only those in dispute. Most of them are satisfactory, and that minimizes the number of cases that come up. If a dispute comes up those participating in it are contractors or those working for contractors. They do not take up disputes in behalf of those not working for the contractor. Nonunion concerns could set the prevailing rate of wages under this bill.

The CHAIRMAN. Knowing the Secretary of Labor as you do, do you think that an open-shop contractor could go to him and persuade him to set a prevailing rate of wages that would be lower than the scale requires by organized labor?

Mr. ALIFAS. I have the highest admiration for the present Secretary of Labor, but we will not always have him.

The CHAIRMAN. We have had three Secretaries of Labor, namely, Mr. Wilson, Mr. Davis, and Mr. Doak, and all have been favorably disposed toward labor.

Mr. ALIFAS. That is quite true. Up to the time the Davis-Bacon bill was enacted into law the office of Secretary of Labor was pretty much a good-will agency. He had very little actual authority to settle controversial questions. He could and did go out and make speeches favorable to labor. In his official life he had to do with conciliation, naturalization, immigration, the women's bureau, labor statistics, and other activities, but those did not involve large questions of a controversial nature, and questions that affected great groups of our people. When you change the nature of the office of Secretary of Labor from a good-will agency to one that must decide upon rate of wages, it may be decided by future Presidents that a different type of individual is wanted at the head of that department; and he would set the rate of wages.

The CHAIRMAN. He is sitting upon it now.

Mr. ALIFAS. The present Secretary of Labor was appointed before the present Davis-Bacon bill was enacted into law, and consequently it would have nothing to do with his appointment. However, if that office is to be a wage-fixing agency, and judging by the character of appointments we have witnessed to strategical positions in the Executive departments, we shall likely have a big business man in there, the same as big business representatives are in control of other agencies of government.

The CHAIRMAN. Along the line of Judge Lovette's remark, I admit that I have not heard one single argument thus far that would turn me against a predetermination of the rate of wages. As a practical matter, what danger is there in including this in the contract? Suppose this committee reported out this bill and it passes Congress, having passed the Senate, and it is signed by the President, whom can it actually harm? We have some good results from the operation of the Davis-Bacon Act; but every day we get letters stating that, for instance, the law is being broken in connection with some job on a veterans' bureau hospital. At some place in the State of Louisiana the Secretary of Labor laid down the rate of wages and the law to a contractor, yet the contractor would not pay the rate of wages. There seems no way to get at those who will not follow the law. Suppose this bill is enacted into law, do you think that, if a danger to the rate of wages came up and there was a real menace confronting labor unions, you could not confidently come here and get action of a remedial sort? As I have said, we find that the present law is not functioning satisfactorily. Let us try to make it function satisfactorily by inserting a penalty clause and the other things mentioned in the Metcalf bill. Do you really think that any real, abiding harm

could come to labor between the present and next December, when the Congress meets?

Mr. ALIFAS. In so far as this committee is concerned, I do not believe there could; but, as you know, bills reported out by this committee are still on the calendar. They have not been passed. The Connery bill is still on the calendar. Whether or not we could get any relief from Congress would depend quite largely upon whether we could get the leaders of the House to agree with this committee and put the bill across. Admittedly, this committee has done its full duty as it saw it; and we know that you are strictly honest and friendly to labor and are desirous of relieving the situation.

Mr. LOVETTE. I am 100 per cent for labor and 101 per cent for organized labor. I wish all labor were organized; but I can not see the disadvantage to labor in the proposal to predetermine the rate of wages. I think it would be a real help to labor. Labor's trouble has been in fighting organized capital and organized government as an organization. That is why you organize.

Mr. ALIFAS. Yes.

Mr. LOVETTE. Suppose there is a contract to construct a building, there is nothing unfair in saying what the prevailing rate of wages is; and it seems to me that such should be done before the construction starts in order to avoid future arguments and disputes.

Mr. ALIFAS. There is not much trouble in determining the prevailing rate for the building trades, but there is much trouble for shop trades and common laborers, who are not organized.

Mr. LOVETTE. Suppose the contractor goes out in this free, American country to build a building. Say he is not going to employ organized labor. What right have I or anybody else to interfere with what he is going to do? What right have we to force him?

Mr. ALIFAS. In a free ccuntry we have no right to force him except by such methods as are legal, such as persuasion, economic pressure, boycott, congressional pressure, and legislation.

Mr. LOVETTE. But if he desires to construct, say, a house and wants to employ any Tom, Dick, or Harry who never heard of a labor union, is there any moral or legal right to force him not to do that?

Mr. ALIFAS. There is no legal right, unless Congress makes it.

Mr. LOVETTE. So that when you get down to the real proposition you do predetermine the rate of wages before construction begins, do you not?

Mr. ALIFAS. But labor does not agree to the predetermination. Labor does not agree to it beforehand.

Mr. LOVETTE. It has its remedy beforehand. If it does not agree to the scale, it may call upon the Secretary of Labor to set the rate of wages, and then your troubles would be all over.

Mr. ALIFAS. I think it would be well if wages, as they have been in the recent past, could be stabilized as a minimum. We all know that what the country needs most is an increased purchasing power; and if private interests gradually reduce wages they are going to continually hurt the country. This bill will merely reflect whatever the employers may be able to do. It does not stop the downward trend of wages. If they can reduce wages this bill would agree with them.

Mr. LOVETTE. Now you are getting on the subject of stabilizing wages in a depression and with falling commodity prices, and that is impossible.

Mr. ALIFAS. The House a couple of weeks ago passed the Goldsborough bill which is designed to increase the commodity prices and bring them up to the level of about 1926 by inflating currency and credit as a means of accomplishing that purpose. If the House is interested in stabilizing commodity prices and thus further reducing the purchasing power of the money of the masses, why not stabilize wages and thereby create or conserve a purchasing power?

Mr. LOVETTE. If anybody thinks that the Goldsborough bill will bring the price of wheat to a dollar or $1.25 a bushel, he is just dreaming.

Mr. ALIFAS. The theory of the Goldsborough bill was that it would do that very thing. The way is being paved to increase the cost of living and at the same time the rate of wages is on the decline; and it seems to me that this bill is paving the way to reduce wages as fast as private employers can hammer down the scale. The private employer is encouraged by it to hammer down the rate of wages. Unless you put in a peg to see that wages shall not be lower than the prevailing rate of wages at a certain time——

Mr. LOVETTE. If you are pegging it when you make the contract you will certainly get through with that contract regardless of time with that wage held pegged.

Mr. ALIFAS. Not under this bill. This bill would authorize the contractor after two months to have the rate of wages reopened with a view to lowering the rate of wages.

The CHAIRMAN. The rate of wages could be increased also.

Mr. ALIFAS. Yes; but the tendency at the present time in the matter of rate of wages is downward, and we want to prevent wages from going downward.

The CHAIRMAN. Labor does not have to work on a job if it does not want to do so. If the contractors started driving the rate of wages downward the Secretary of Labor would intercede. When the contractors start driving the rate of wages downward the Secretary of Labor has the authority to step in and say what the prevailing rate of wages is.

Mr. ALIFAS. When we go to the Secretary of Labor and ask him to do something that is contrary to the requirements of law, we are putting him in a most embarrassing position. If the prevailing rate of wages has been driven downward by private employers who are not embraced within this scheme, and the Secretary of Labor learns that wages have gone down, he would be obliged to put the lower rate of wages into effect under this law.

The CHAIRMAN. You say the employers would drive the rate of wages down. They can not do that if the men refuse to work at the rate of wages offered.

Mr. ALIFAS. At a time when employers do not care very much whether they operate their factories or not, pressure by labor strikes or otherwise is not going to induce them to change their wage scale plans.

The CHAIRMAN. These are Government contractors and their money is good. They will get their money.

Mr. ALIFAS. This bill does not provide that the scale of one contractor is going to be regulated by what other Government contractors pay. It is the rate that private industry pays that will govern. Contractors on private jobs will determine the rate of wages. On account of the economy program in Congress, there is going to be less construction done.

The CHAIRMAN. According to yesterday's announcement, there is going to be more construction.

Mr. ALIFAS. Congress shall have to change its mind about the economy program before anything comes of that. When this bill was passed in the Senate, Government work was going to be reduced.

Mr. LOVETTE. Suppose there is a contract, one begins, and there is no prevailing rate of wages set forth in the contract; and suppose wages slump during the life of that contract; what would happen in the absence of this bill?

Mr. ALIFAS. If there were union men on the job they would resist having their wages reduced at the present time, and if they threatened to quit possibly the contractor would allow the scale to stand where it was.

Mr. LOVETTE. Notwithstanding the fact that he was losing money?

Mr. ALIFAS. He would lose more money if he experienced a strike. He would, for one serious thing, run up against the matter of completion of his contract within the contract time limit.

Mr. LOVETTE. What do you think about a contractor who is shrewd and smart, as some of them are, and who looks into the future, in the absence of this law, and says that he sees that wages will slip and before he gets a certain contract completed wages will be so and so, and he will not start in at the top? What do you say about that situation? Suppose, if I were a contractor, I should say that before this year is out wages will be lower and I can get a job done cheaper and I will not pay the existing rate of wages, because I know I can get labor cheaper?

Mr. ALIFAS. I think that very thought is one of the prime reasons industry is not starting off; namely, it is expected that they may get work done cheaper in the future, and all are waiting for that time. These statistical agencies who advise clients when to buy materials, are telling their clients not to buy steel, brick, cement, and other materials now, because they will be cheaper. That practice is holding off recovery in industry to-day. If you put a peg in the bottom and say, "You will not be able to get labor any cheaper," there will not be the incentive to delay construction.

The CHAIRMAN. Mr. Lovette asked about the contracting waiting, and you said something about a strike. Would not these conditions deny the right to strike, should that be necessary, after the contractor begins to drive the rate of wages downward?

Mr. ALIFAS. If the contractor has a nonunion crew and they set the pace, it would make it more difficult to get a higher rate of wages on other contracts. Suppose we have in a certain vicinity, nonunion contractors employing nonunion help, and with the influence they have with the administration, it would be possible to allow them to have the first chance to set the rate of wages, then labor would have nothing to do with their concern, at least after the job was done, because the members of organized labor were not employed. They could set a lower scale and when a union contractor came along there

would be the precedent of the nonunion contractor's scale predetermined.

The CHAIRMAN. Judging by your own experience with the Secretary of Labor, do you think that such would happen?

Mr. ALIFAS. The Secretary of Labor is going to find it difficult to personally handle all of these mattters; and many of these contracts come through the engineering department of the War Department—the Corps of Engineers, which is, of course, headed by Army officers, who are reputed to be not very sympathetic with the views of organized labor.

The CHAIRMAN. They do not have anything to do with the building trades.

Mr. ALIFAS. But they have everything to do with the river and harbor work.

The CHAIRMAN. That work does not come under the provisions of the Davis-Bacon Act.

Mr. ALIFAS. The Corps of Engineers of the Army is now letting contracts for river and harbor work.

The CHAIRMAN. You have no redress under present law in connection with river ahd harbor work, which does not come under the prevailing rate of wages law; but that work would come under it according to this bill H. R. 11865.

Mr. ALIFAS. Yes. I think that is the source of the trouble—where the trouble will come from—the fact that it has to pass through the Army before it gets to the Secretary of Labor, and the Secretary of Labor will have all of the Army arguments and set-ups to combat.

The CHAIRMAN. I do not think he would have trouble with it. I think he could handle it satisfactorily.

Mr. LOVETTE. You do not expect to keep the wages up to the level they were? You must expect the rate of wages to go down? No doubt you concede that.

Mr. ALIFAS. I had hoped that we would be able to keep wages up. Congress has already tried to peg the price of commodities, and if it would try to peg the price of labor and appropriate a large sum for construction work and thereby increase the buying power of the masses of this country, we would see better times.

Mr. LOVETTE. Where would we get the money with which to do that?

Mr. ALIFAS. From the tax bill now under consideration; issue bonds and spend the proceeds as I have indicated.

Mr. LOVETTE. Do you really think it is possible to keep up the rate of wages paid to labor? How much does a bricklayer receive a day?

Mr. ALIFAS. The scale varies in different communities.

Mr. MCDONOUGH. It is $14 a day.

Mr. LOVETTE. A bricklayer receiving $15 a day could, from the proceeds of one day's work, buy enough wheat to feed two families a year. He could get 75 bushels of corn for a day's work right now. We have thirty millions of farmers and the persons who raise that corn and wheat do not make a single dime. They do not make a cent by their efforts; in fact, they lose money in raising those things. With this condition, can you reasonably hope to keep up the price of labor? We have ten millions of people out of work, and when one may take

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the wage of a bricklayer for one day and buy 40 bushels of wheat or 75 bushels of corn, do you think that condition will stand?

Mr. McDONOUGH. It might be interesting for you to know that even in normal times when the construction peak is highest the average building-trades mechanic does not average 200 days' work a year. That would be a maximum.

Mr. LOVETTE. I understand, because I myself am a bricklayer.

Mr. McDONOUGH. I am a plasterer. Under conditions that prevail at the present time, the possibility is that the building tradesmen in this country, all in all, are not averaging a hundred days' work a year. That would be a maximum. The only place a bricklayer gets $15 a day now is in New York City. At the present time I doubt whether building tradesmen in this country are averaging $1,200 a year. So when you say $15 a day that does not mean anything, for the reason one has to take into consideration the amount of time a building tradesman is able to get work in a year. He may work, say, three weeks for $14 or $15 a day and then lose the next six weeks.

Mr. ALIFAS. For the group I represent personally the scale runs less than $7 a day. These are machinists employed in the Government service.

In reply to your inquiry about the farmer, Judge Lovette, I do deplore the condition of the farmer, but I do not think it is going to benefit him to impoverish his customers. If workmen get less pay, they will not be able to buy as much, and that will, obviously, cause the price of farm products to decrease. Therefore, if the farmer should be interested in reducing the city worker's pay he is simply ruining his best customer. If the rate of wages in the cities is kept up and more persons are put to work on public projects, that will increase the buying power of the masses of our people and benefit the farmer.

Mr. LOVETTE. How can you keep it up when everybody is moneyless?

Mr. ALIFAS. The Government can borrow money. A little more than a year ago I had an analysis made by a group of economic experts as to how much buying power was developed by a dollar spent upon Government work in the course of a year. We all know that when a workman gets his pay from the Government or from a contractor he spends it usually with the retailer. The retailer in turn spends part of it on his family, he puts a little in the bank, and he spends the remainder in replenishing his stock. The wholesaler does the same thing. He goes to the manufacturers for more goods; and the money finally gets back to the workmen. It was estimated that in the course of a year $1 spent on Government work produced about $5 worth of buying power. Our present depression amounts to about $25,000,000,000 per year below normal; and if that be true, an additional expenditure of $5,000,000,000 a year on Government works would lift the depression and bring prices back to where they were. It would also follow that every time a workman is discharged, in the course of a year, four more men are discharged as a result. The average workman has about two other persons dependent upon him for support, and therefore every time a workman is discharged 15 persons are thrown on the verge of starvation or want. Conversely, if we spend more money we will, in a sense, be priming the industrial

pump and starting things going. The large taxpayer is not investing his money now because he is afraid he will lose it. If you tax him and spend his money for him, the fact that it is being spent will create enough business to enable him to get it back within a year.

Mr. LOVETTE. How would we tax it if it is in Government securities and in safety vaults and we do not know what he has?

Mr. ALIFAS. We have not reached the point where tax payers have refused to pay their taxes. If you would cut the taxes in two the employers would not start business, because they have to have customers before they can produce. Unless we can find a market somewhere, either at home or abroad, the producer will have no place to sell his goods. Eighty per cent of the goods manufactured is consumed by the wage earners and the farmers. If you cut wages and throw workmen out of work, you will just sap the very soil from which your future customers are going to come.

I have occupied more of the time of the committee than I had expected to occupy, and doubtless some of the thoughts I started to discuss have not been fully rounded out; but, perhaps, sufficient has been said to indicate our position on the pending bill; and, therefore, I have nothing further to add at this time.

The CHAIRMAN. If the witness has nothing further to tell us and there are no further questions by members of the committee, let us thank the witness for his statement and hear the next witness.

The chairman is this morning in receipt of six telegrams concerning the pending legislation, and he will read them into the record at this time. They say:

NEW YORK, N. Y., *May 11, 1932.*

Hon. WILLIAM P. CONNERY,
Chairman Committee on Labor, House of Representatives,
Washington, D. C.:

We are greatly in favor of predetermination of wages as set forth in the latest Connery bill and also the Metcalf bill and being among the large contractors in this county I take the liberty of telegraphing you our views as above.

JAMES STEWART & Co.,
J. C. STEWART, *President.*

NEW YORK, N. Y., *May 11, 1932.*

Hon. W. P. CONNERY,
Chairman Committee on Labor, House Office Building:

We strongly recommend that bill in reference to predetermination of wages on Government work which we understand is now before Congress be given favorable consideration.

GEORGE A. FULLER Co.,
LOU R. CRANDALL, *President.*

CLEVELAND, OHIO, *May 11, 1932.*

WILLIAM P. CONNERY,
Chairman Committee on Labor, House of Representatives,
Washington, D. C.:

We regret it was not possible for our company to be represented before your committee favoring H. R. 11865, providing for predetermination. We have been closed-shop contractors for 17 years and believe this legislation is constructive and will be of benefit to labor contractors and general public.

THE LUNDOFF BICKNELL Co.,
C. W. LUNDOFF, *President.*

NEW YORK, N. Y., *May 11, 1932.*

Hon. WILLIAM P. CONNERY,
Chairman Committee on Labor, House of Representatives:

We are in favor of predetermination of wages as outlined in the Metcalf bill and the Connery bill.

STARRETT BROS. & EKEN (Inc.).

CHICAGO, ILL., *May 11, 1932.*

WILLIAM P. CONNERY,
Chairman House Committee on Labor, Washington, D. C.:

The writers representing the Builders Association of Chicago and the Building Construction Employers Association of Chicago desire to advise you that they believe that Senate bill 3487, known as Metcalf prevailing wage rate bill, should be passed by the House of Representatives as an essential measure to protect the interests of both the employers and employees when bidding upon Government construction. Your cooperation is earnestly requested.

O. W. ROSENTHAL.
E. M. CRAIG.

ST. LOUIS, MO., *May 11, 1932.*

WILLIAM P. CONNERY,
Chairman House Committee on Labor:

Am sorry was necessary I leave Washington last week without testifying before your committee favoring H. R. 11865, providing for predetermination. I have been close-shop contractor number of years. Believe this legislation constructive and will insure to benefit labor, contractors, and public.

W. L. WIMMER,
President Wimmer Contraction Co.,
916 Victoria Building, St. Louis, Mo.

STATEMENT OF H. W. BLUMENBERG, GENERAL REPRESENTATIVE OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS

The CHAIRMAN. The next witness to be heard is Mr. H. W. Blumenberg, general representative of the Brotherhood of Carpenters and Joiners.

Mr. BLUMENBERG. Mr. Chairman and members of the committee, my particular opposition to this bill is to that part of it on page 2, line 18, starting with the words "if however" to line 20, page 3, ending with the word "contractor." This part of the bill, if adopted, would enable any contractor or subcontractor to make a request for a new wage scale on any Government work, every three months, thus creating chaos on every job during its construction throughout the whole country.

Labor, as a rule, makes agreements with its employers or contractors every year for a certain wage scale and conditions, said agreement to run for at least one year or more; so why can not this same rule be applied to the work being done by our Government? By not doing so you will demoralize the entire standards of living throughout the country.

Now, if some unreliable contractor got a large job—not a Government project—in any locality where a Government job was under operation, and this contractor brought in cheap labor with him, as has happened in many cases of late, for the sake of argument

we will say that the prevailing rate of wages for carpenters is $1 per hour in said locality and this contractor would only pay men he brought with him 50 or 60 cents an hour. Say that he has 100 or 150 men working as carpenters for him on his job and the local contractors had 50 or 75 carpenters in their employ, paying them the $1-per-hour scale in accordance with their agreement, the contractors or subcontractors on the Government job would ask for a new rating as to the carpenters' rate.

Under this bill, if enacted into law, and without a quetsion of doubt whoever would have to determine what the prevailing rate is would have to say it is 50 or 60 cents per hour, because of the fact that he found a greater number working for that scale. That means that the men brought in by the cheap and unreliable contractor would destroy the existing prevailing rate of wages and conditions in that locality as agreed to by the local contractors and their men.

You can therefore see that this would create more hardship to the locality instead of relieving it. I am sure that this is not the policy to which our Government wants to be a party during this time of deep depression, as it would only help to make matters worse than they now are and be contrary to the desires expressed by President Hoover time and time again not to reduce wages.

Also, I want to say, gentlemen, that in order to carry out the intent as well as the purpose of this bill provisions will have to be made to increase the force of the Department of Labor and provide the money with which to pay them, as it will require an army of conciliators and auditors to go all over this country if a job lasts more than three months and the contractors would want a new rating for their jobs.

As you well know, you can not run any department on a shoestring; therefore, instead of trying to reduce the expenses of the departments, you would have to increase them for the Department of Labor if you want this law to be enforceable. And this would apply to the Treasury Department also in connections with additional accountants and auditors.

The Davis-Bacon law was enacted to remedy disturbing conditions, as well as evils that existed because certain contractors were running wild all over this country paying labor what they pleased. Just as soon as the act was put in force and they saw that they could not do as they pleased and get every drop of blood out of the men they employed, they, with the bonding companies, had this bill introduced. Why are they in such a hurry to have the law changed? Why not give the Davis-Bacon Act a fair chance to be tried out, and then, if found wanting, change it; but do not do away with it just to please the whim of some contractors who are not satisfied until they have the wage rates changed and upset agreements that will affect private work, because the Government work is but a small part of the construction program in the country at large during normal times.

In conclusion I will say that if this bill is enacted it will give to brokers the opportunity of getting into the contracting business. If their wage rates are determined in advance for them, and they are protected against fluctuations, then we should go farther and assure them against weather conditions and material price changes.

Anybody financially responsible can go into the contracting business, with material men anxious to figure out the cost and quantities

of the material and, with the Government to figure out wage costs under this law, it will require no building skill or record of accomplishment to become a contractor.

If you are committed to a change in the law, then why not protect experienced contractors and make it necessary for a bidder on a Government project to agree to build at least 50 per cent of the contract himself and to be responsible for every subcontractor to whom he gives part of the work?

Gentlemen, I think you should give every consideration to this important matter, which will not only affect those on Government work but the scores of thousands of building craftsmen on private work whose wages and conditions are bound to be affected by what you do here. Remember that, in a few years, there will be very little Government building going on, but private building in great magnitude goes on forever.

The CHAIRMAN. If you were a fair contractor and believed in the rights of organized labor and you were going to construct, say, a post office for the Government, would you not rather have the amount you were going to pay your workman predetermined than handled otherwise?

Mr. BLUMENBERG. Theoretically I would; yes.

The CHAIRMAN. Where is the real danger to labor here?

Mr. BLUMENBERG. I want to say that, in my humble opinion, I do not believe this bill will do what they say it will do. It reminds me of trying to get a child to take a bitter pill. This bill is only a sugar-coated pill, the bitter part being the opportunity to change the rate of wages every three months. That is exactly what some of these contractors want.

Mr. LOVETTE. Suppose we made that period one year, what would you say?

Mr. BLUMENBERG. I do not think that would do any good; but it would not be so bad as a period of three months. That three-month period would disrupt organized labor over all the country.

The CHAIRMAN. Is this not a two-sided question? If the rate of wages should go up, labor would have the opportunity to ask a reconsideration by the Secretary of Labor. Labor would have the opportunity to show that wages were going up.

Mr. BLUMENBERG. Labor, as has been stated, enters into contracts with employers in the different communities and that contract is binding for from one to two years. The contractors and the laborers live up to that contract, and therefore it is unnecessary to predetermine any rate as long as they go according to that scale and protect the contractor in the locality in which the construction is under way. I do not see why it is necessary to predetermine the rate of wages. All that is necessary to learn the prevailing rate of wages is to inquire in the various neighborhoods and learn what the fair contractors are paying.

Mr. LOVETTE. That is the point. There is no difference of opinion in regard to that. The rate of wages is predetermined when the contract begins?

Mr. BLUMENBERG. Yes.

Mr. LOVETTE. What is the objection to writing something that is a part of a contract into a contract?

Mr. BLUMENBERG. I am not saying anything about the objection, Judge Lovette, but I say that the predetermination of the rate of wages is only sugar coating for this bill.

Mr. LOVETTE. What other objection is there?

Mr. BLUMENBERG. There would be under it a change in the rate of wages every three months, and that would create hardships and turmoil all over the country. There is no use "kidding" ourselves about this. That is the nigger in the woodpile.

The CHAIRMAN. S. 3847, page 2, beginning in line 18, provides that—

> If, however, the work contemplated by the contract requires more than three months for its completion, the Secretary of Labor, at the request of the head of the department, independent establishment, or other agency of the Government concerned, or on petition of the contractor of his subcontractors, or of not less than 20 laborers and/or mechanics employed on the work * * *.

Then we have the Ramspeck amendment in H. R. 11865, page 5, beginning in line 16, providing that—

> If, however, the work contemplated requires more than three months for its completion, the Secretary of Labor, at the request of the head of the department, independent establishment, or other agency of the Government concerned, or of not less than 20 laborers and/or mechanics employed on the work, or the officers or representatives of associations or organizations of laborers and/or mechanics shall from time to time reexamine the prevailing rate of wages being paid to laborers and mechanics for work of a similar nature in the city, town, village, or other civil division of the State, or the District of Columbia, in which all or a principal part of the work is located, and if such rate is found by him to have increased or decreased he shall notify the head of the department, independent establishment, or other agency of the Government concerned, who shall pay not less than the rate of wages stated in said notification from the beginning of the next pay period following the date of receipt of such notification.

Now, according to those, both the contractor and the workers have the right to go to the Secretary of Labor and ask for a reexamination of the rate of wages; and, apparently, you are afraid to take chances with the Secretary of Labor.

Mr. BLUMENBERG. No. We would not need a Secretary of Labor, if the Government awarded these contracts to real contractors instead of brokers, who are in no sense builders. They sublet everything, and that is why I said that at least 50 per cent of the work should be done by the general contractor himself. But the Government will not do that. It gives the work to politicians just to help them along.

The CHAIRMAN. Let us suppose that the legitimate contractor you speak of wants to take a contract with the Government to construct a public building, such as a post office. Under the present law he has an agreement with labor. He says, "I am fair to labor. I will pay a fair wage." That man, fair, as I have said, to labor, comes in and tries to get a contract, but he is up against a fly-by-night contractor and he can not get the contract in competition with the unfair contractor. Now, if the rate of wages were predetermined and the fly-by-night contractor would have to pay the same as the legitimate contractor, it would be better.

Mr. BLUMENBERG. But this law will not change that. They will effect a return of that money, if it is actually paid, and they will submit falsified pay rolls. Right now many employees are signing a blank pay roll and the crooked contractors are filling in fictitious amounts. The workers are not getting the amount they are supposed to get, that is sure.

The CHAIRMAN. In this bill there is a penalty of $10 a day and a penalty for a refund.

Mr. BLUMENBERG. But that is all bunko, because you can not get a nonunion man to give evidence that a false pay roll is submitted or that he had to make a refund. The Government should see to it that legitimate contractors, of whom there are many, get this work instead of the "cattle" who are doing it or trying to do it now.

The CHAIRMAN. We all heartily agree with that, I am sure. We want to see the legitimate contractors get the work.

Mr. BLUMENBERG. I want to show you how the Government does. At Barksdale, La., airfield the Government is about to construct 42 garages for commissioned Army officers and 34 sets of quarters for noncommissioned officer. The officer in charge there informed our business agent that they were not going to give that work out as one unit but were going to give it out in single units in order not to come within the scope of the Davis-Bacon Act and the Executive order.

The CHAIRMAN. The Connery bill would cover that. The Connery bill provides $500.

Mr. BLUMENBERG. If the Government wants to be fair—organized labor and legitimate contractors are fair—it will give this work to legitimate contractors and get a dollar's worth of work for a dollar in money.

Mr. LOVETTE. If we should cut out the 3-month clause and let the rate of wages be predetermined when the contract begins, writing the terms into the contract and let them remain during the life of the contract, allowing no revision of the rate of wages, how would that suit you?

Mr. BLUMENBERG. That would be all right but for this year it would not be workable. It would destroy conditions in the various localities. Suppose the building trades organizations in those localities had made agreements with employers for a year at certain rates of wages and at the end of the year things had gone up and the men wanted to get another increase and the local contractors gave it. If this contract was going on you would have to work under the old scale. Why not make it, "According to the wage scales and conditions established by the building trades in that locality"? I would like to have the permission of the committee to submit for the record certain pertinent correspondence from the United Brotherhood of Carpenters and Joiners of America.

The CHAIRMAN. Without objection, they may be inserted.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
Shreveport, La., May 5, 1932.

Mr. WILLIAM L. HUTCHESON,
General President, Indianapolis, Ind.

DEAR SIR AND BROTHER: The War Department is asking for bids May 21 for construction of garages for the 42 commissioned officers and 34 noncommissioned officers' quarters in Barksdale Field.

I was informed to-day by the chief quartermaster at the field that they are to be let in small groups to come under the $5,000 limit so that the prevailing wage act will not apply to them.

Can you assist in having this method condemned before they are awarded as the officers quarters were awarded in two groups; one of 34 and the other of 42.

Some contractors that have work in the field now, will work men for any wages and can get men for any wages, and will bid on one or all groups.

Yours fraternally,

JOHN HOWAT,
Business Agent Local Union 764.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
Indianapolis, Ind., May 9, 1932.

Mr. JOHN HOWAT,
Business Agent Local Union, No. 764, Shreveport, La.

DEAR SIR AND BROTHER: Your letter of May 5 received, and I note your statement that the War Department is asking for bids May 21 for construction of garages for the 42 commissioned officers and 34 noncommissioned officers' quarters in Barksdale Field, and that you have been informed by the quartermaster at the field that they will be let in small groups so that they do not come under the $5,000 limit, and therefore the prevailing wage act will not apply to them.

It is only a subterfuge to get around the laws and I am sending a copy of my letter to you to our Washington representative, asking him to interest himself in any way he can to bring about the desired results.

Fraternally yours,

WM. L. HUTCHESON,
General President.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
Shreveport, La., May 16, 1932.

Mr. HENRY W. BLUMENBERG,
Washington, D. C.

DEAR SIR AND BROTHER: In answer to part of your letter of May 11, will say it contains more information than any that I have had from Washington, and I am only answering part of it at this time—the part concerning the garages that they are asking bids on May 24.

When I wrote to President Hutcheson May 5, concerning the awarding of contracts to come under the $5,000 limit, I did not say anything about officers' quarters to be built, I only wrote of the garages for the officers' quarters. I am inclosing you a copy of my letter to the general office, that you may read it if you care to.

I am confident that the conniving is going on here in this field, but can not say for sure.

There are 23 separate buildings to be let in 10 separate contracts May 24, all to be less than $5,000, so that the prevailing wage act will not affect them. These buildings are garages for the officers' quarters: Seven buildings have 6 stalls; 8 buildings have 5 stalls; 7 buildings have 3 stalls; 1 building has 12 stalls, making a total of 115 stalls all told.

Captain Lamb told me they are to be let in 10 different contracts, and all units will be under $5,000, and the prevailing wage act will not affect them.

An estimator for a contractor that I do not care to divulge his name at this time told me the specifications do not have anything in them about the prevailing wage.

I learned Saturday for the first time that the pump house does not contain the wage clause in the contract. It cost $13,200.

I have a lot to write you but haven't time now as I thought you may be able to block the above-mentioned method of trying to beat the law.

Yours fraternally,

JOHN HOWAT,
Business Agent Local Union 764.

If the gentleman has nothing further to tell us, and there are no further questions by members of the committee, let us thank the gentleman and hear the next witness.

Mr. GALLAGHER. I should like to know what the committee has in mind relative to the kind of proposition I am about to mention. If you predetermine the rate of wages on any of these jobs and this sort of condition arises, as it exists on the post office at Louisville, Ky.: what will you do? The new House Office Building is across the street from us and all the wooden frames you see were primed in a mill in Kentucky by union painters who were paid the same rate of wages as if they were on the outside—in the community generally. We have now a post office at Louisville, Ky., being constructed by Pike & Cook, of Minneapolis, and the painting contractor doing the

trim in the mill for that work is paying painters 40 cents an hour in the mill, while the rate on the outside is $1.125 an hour. The contention is that the work being done in the mill does not come within the scope of the Davis-Bacon Act because it is not done on the site of the job.

The CHAIRMAN. We have to be careful. For instance, if we cover steel turned out by the United States Steel Corporation we shall have to fix the rate of wages in the United States Steel Corporation. I would like to see that done.

Mr. GALLAGHER. This has been a legitimate practice by every fair painting contractor as long as I can remember. It helps them and is a saving and the men can accomplish a great deal more. They ought to be very proud indeed that the men would go into the mill and do the work. Suppose we should take the stand that we would not paint any building unless they put the work up in its raw state and do all the work on the job? We can be as insistent on the point, or compel the contractor to put coats on in the mill and then put additional costs on when the work gets on the job. That is a nutty problem.

These subcontractors are screwed down so tight that they can not make any money on a job. It is an impossibility. They take a gambler's chance and this is one of these gambles.

This man took the contract to do the painting on the Veterans' Bureau hospital at Lexington, Ky., and fell down on the job. The foreman on the job went to the foreman for a Chicago company and told him that they were done. Their boss had no money and they were going to quit. The superintendent of the Chicago concern told the foreman painter to continue on the work and he would pay him. That is two months and a half ago and here [indicating] is a letter I got this morning reading:

DEAR SIR: I am writing you again to see if there is anything further you can do in regard to the pay of the seven painters I took up with you. These men need their money and all I can get out of them is that the Government has notified them to pay off, but when? I wrote to the Veterans' Bureau, but received no reply from it. Hoping you will take this matter up again as soon as possible, I remain,

Fraternally yours,

The CHAIRMAN. A great many complaints have come from contracts for hospitals for the veterans and it seems to me that, with all these complaints, you are making a very good argument for predetermination, because, if the Secretary of Labor instead of the Veterans' Bureau had the setting of the rate of wages, you would not have half so much trouble as you are having.

Mr. GALLAGHER. I think the remarks of Mr. Welch about bringing these unfair contractors here and have them explain are the most appropriate I have heard around this table. He said it was high time to bring those contractors here and investigate them. Call them here and let us face them. We are not afraid of them. We would confront them with undisputable evidence that they are robbing the poor mechanics who are starving and are compelled by adverse circumstances to work on these jobs at outrageously low wages. These mechanics can not help themselves, and then after working for money they are robbed of it. It is a most disgraceful thing and yet the Government continues to pay that general contractor. As a contractor progresses with the work he is paid periodically, and then they deliberately rob the workmen. I understand that the man who furnished all the hardware on the Lexington job has not received a cent for a nail, a screw, a lock, or a bolt. Those are the kind of contractors who are doing the Government's work. They ought to be ashamed of themselves.

The CHAIRMAN. I agree with you. One remedial step might be to go to the President and ask him to have the Attorney General indict them. Is not that a quicker way to proceed?

Mr. GALLAGHER. That department is confronted with the Hurd law. I myself read that law in the law library. I went to the library and represented myself to be a lawyer, even though I didn't look much like one. Well, I got the law book and read what is known as the Hurd law. I was confronted by it down in the Treasury Department some time after that; and it was that I would have to wait six months after completion of the job before I could get a lien against them. I think it is high time for labor to rise out of its lethargy and attack some of these jobs, bring the contractors into court, stop them, and settle the difficulty that way. That is the only way this can be settled.

The CHAIRMAN. The Government indicted a contractor for irregularities in West Virginia, did it not?

Mr. GALLAGHER. Somebody has got to spend some money, and we haven't got any, so we hope to persuade you Congressmen to appropriate some money and sue and put these contractors in jail. [Laughter.]

The CHAIRMAN. In view of the agreement you made with the Secretary of Labor, you ought to have enough influence with the President to cause the Attorney General to indict these unfair contractors.

If Mr. Gallagher has nothing further to tell us, and there are no further questions by the committee, let us hear the next witness.

STATEMENT OF H. A. McCONAUGHEY, PRESIDENT OF THE CENTRAL LABOR UNION, CANAL ZONE

The CHAIRMAN. Let us now hear Mr. McConaughey, president of the Central Labor Union, Canal Zone.

Mr. MCCONAUGHEY. Mr. Chairman and members of the committee, it is not my purpose to enter into any discussion of the merits of predetermination of wages or any of the other items of the pending measure. My purpose in appearing before you is to have the Canal Zone covered by the terms of this bill. The Canal Zone is not within the scope of the Davis-Bacon Act. Therefore at the present time we have no protection whatever on Government contracts; and I have been desirous ever since the prevailing rate of wages act was under discussion to have the Canal Zone covered in legislation of this character. It was found impracticable to do that when the Davis-Bacon bill was introduced, because we were told, as you gentlemen well know, that we had to take the bill as written and that any amendments would probably result in the defeat of the legislation.

The CHAIRMAN. I read of that in the record yesterday. The Secretary of Labor said at that time that they had an agreement with the heads of other departments and that any change in the bill would jeopardize its passage.

Mr. MCCONAUGHEY. Therefore I did not attempt to have an amendment introduced to cover the Canal Zone in the Davis-Bacon

law, when it was before the Congress. You will doubtless remember that when we were considering the bill Mr. Connery introduced several months ago I appeared before your committee and gave my reasons for requesting that the Canal Zone be covered by this legislation; and I do not intend to take your time by repeating those reasons at this time. I simply want to request you to include the Canal Zone within the scope of this proposed legislation.

The Canal Zone could be included within the scope of this legislation by the following additions to H. R. 11865, which is Mr. Connery's bill to amend the act approved March 3, 1931: On page, 2 line one, after the word "Columbia" insert a comma and insert the words "the Canal Zone"; on page 2, line 9, after "Columbia" insert a comma and add "the Canal Zone"; page 2, line 13, eliminate the word "or" substituting therefor a comma, and after the word "Columbia" insert the words "or the Panama Canal"; page 3, line 2, after the comma following the word "Columbia" add the words "the Canal Zone"; page 5, line 12, after the comma following the word "yards" add the following words, "or work performed by the Panama Canal." Also, in view of the fact that there has been some question raised by the Assistant Secretary of War as to how a prevailing rate of wages could be arrived at in the Canal Zone, I thought, to make that clear and specific, it might be well to insert between lines 23 and 24, page 3, the following provision: "The prevailing rate of wages on the Canal Zone shall be the rate of wages paid by the Panama Canal." That would not leave any dispute as to the prevailing rate of wages. It would make the matter definite, telling what the prevailing rate of wages meant.

My purpose in suggesting these amendments is this: We have work performed on the Panama Canal by the Panama Canal organization, by the Navy and by the Army and by contractors for these three agencies. I would have the rate of wages paid by the Panama Canal used as the criterion for establishing wages for work performed by the Army, by the Navy, and by contractors for all three of those agencies. Contractors perform work for the Panama Canal, for the Army, and for the Navy.

The CHAIRMAN. The Panama Canal has a special law of its own with reference to wages?

Mr. MCCONAUGHEY. Yes.

The CHAIRMAN. And thereunder the wages paid shall not be more than 25 per cent higher than wages paid in the United States.

Mr. MCCONAUGHEY. That is the law for the Panama Canal.

The CHAIRMAN. If the committee should put in an amendment of that character, would it not be setting a wage that might be declared unconstitutional? We do not say "the prevailing rate of wages." Everything else here says "the prevailing rate of wages;" but in that you say the wages paid by the Army and the Navy shall be the same as paid by the Panama Canal.

Mr. MCCONAUGHEY. Yes.

The CHAIRMAN. You have a special law which really takes care of your people in regard to wages down there?

Mr. MCCONAUGHEY. Yes.

The CHAIRMAN. Are your wages higher than what we call the prevailing rate of wages in the United States for the same work?

Mr. MCCONAUGHEY. Yes.

The CHAIRMAN. That is where the question comes in.

Mr. MCCONAUGHEY. But the rate paid by the Panama Canal is actually the prevailing rate of wages in the Canal Zone. It is the only well-established rate that is paid continuously.

The CHAIRMAN. You are running into the same difficulty that would present itself if we said "as set by the American Federation of Labor" or "by union labor." Is that not a question of constitutionality?

Mr. MCCONAUGHEY. If there is a doubt in the minds of the committee as to the constitutionality of the last amendment I suggested it might work out all right it that were not included in H. R. 11856.

The CHAIRMAN. If you said instead of that "the prevailing rate of wages of the Panama Canal," would that be different from the Panama Canal Zone?

Mr. MCCONAUGHEY. There is no such thing as the Panama Canal Zone. The strip of territory owned by the United States on the Isthmus is the Canal Zone. The Panama Canal is just a ditch, a canal within the Canal Zone and the organization that operates the canal and its appurtenances is referred to officially as the Panama Canal. That is analogous to the Veterans' Bureau or any other agency in the Government.

The CHAIRMAN. It is hard to get away from the trouble we had before. I refer to the difficulty about the West Indians employed on the canal and who are paid a rate of wages different from that paid the Americans. We do not want to become confused in case the committee sees fit to take some action in regard to this matter.

Mr. MCCONAUGHEY. It might work out satisfactorily on the Canal Zone without the last amendment suggested at the close of section 1 of H. R. 11856.

The CHAIRMAN. How would it work out without the amendment?

Mr. MCCONAUGHEY. We can get along all right, no doubt, without it.

The CHAIRMAN. Without that amendment you would be in the same position as labor in the United States?

Mr. MCCONAUGHEY. I think we would be protected all right without that suggested amendment at the end of section 1. I offered it with a view to making the terms of the bill very definite. It is entirely possible that the bill would work out satisfactorily without that; and I leave the matter to your judgment.

The CHAIRMAN. The committee will be glad to consider your suggestions.

Mr. MCCONAUGHEY. I have nothing further to offer.

The CHAIRMAN. If there are no further questions by members of the committee, let us thank the witness for his statement and hear the next witness.

STATEMENT OF DAN M. GAYTON, REPRESENTING THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, AND ORNAMENTAL IRON WORKERS

The CHAIRMAN. Our next witness is Mr. Dan M. Gayton, representing the International Association of Bridge, Structural, and Ornamental Iron Workers, 636 North Fifth Street, Allentown, Pa.

Mr. GAYTON. Mr. Chairman and members of the committee, I am going to try to outline to you the reasons why this proposed measure covering building construction would prove injurious to mechanics employed on building work.

First, if wages are set by the Government before a job is started and the wages are below the standard wages agreed upon by building employers and the employees, the employers would ignore the agreement setting forth that they would not pay more wages than the United States Government pays for its building construction.

Secondly, after 10 days the employees failing to make an affidavit leaves the contractor a successful law violator.

Thirdly, after these employees make the affidavits they are discharged, engendering a fear on the part of the contractors' other employees in the matter of making affidavits.

Fourth, this law would place the taxpayer or the employees of the contractor as the investigators and without affidavits from him no real action could be taken against contract-law violators. A contractor employing workmen afraid to make affidavits would have enough influence over his workmen to force them to make false statement that they were receiving the real wage.

I realize that this committee desires to be helpful to general contractors, subcontractors, the Government, and all workmen.

If a man is sick, he needs a doctor, and the doctor diagnoses his ailment and prescribes the necessary medicine to cure the patient.

Your committee sitting here is the doctor in this case and you have four sick patients, namely, general contractors, subcontractors, Government departments, and building construction mechanics.

The Davis-Bacon law has not proved itself worthless any more than any other law has proved itself worthless. The Davis-Bacon Act has been successful in operation wherever our Government officials have put forth any, I say any, effort to enforce it. Unfortunately, in many cases Government officials have permitted this law to be violated after they were informed of unmistakable violations of it by letters, telegrams, affidavits, telephonic calls, the United States Department of Labor, United States Senators and Representatives in Congress from various districts.

Nobody would say that a law was no good because those who are paid to enforce it permitted some to violate it and forced others to comply with it.

In my judgment, the only department of the Government that has insisted in good faith upon a compliance with the Davis-Bacon law is the Department of Labor.

Where this law is violated the Department of Labor sends a conciliator to investigate and he reports his findings to the Department of Labor, the head of which then reviews the case and sets the prevailing rate of wages in accordance with the provisions of the Davis-Bacon Act. That rate of wages, once determined by the Secretary of Labor, is sent to the Government department under which a job comes. With that determination of the prevailing rate of wages the Secretary of Labor has completed his part of enforcing the Davis-Bacon law, and it is then up to the other Government officials to force a compliance with the Davis-Bacon law under whatever contracting department the jobs may be. I know of but few cases

where any of these officials of the contracting departments went out of their way to force a compliance with this Davis-Bacon law.

An abundance of affidavits have been presented to many of these departments, but I do not know of a single instance where a contractor or subcontractor was compelled to make payment to taxpayers employed as mechanics where it was shown unmistakably that the employer had violated the law and had taken part of the mechanic's wages as a part of his own profit.

The cure the doctor should prescribe is the placing of the enforcement of the Davis-Bacon Act solely in the hands of the only one who will faithfully execute it, namely, the Secretary of Labor, who, as I have said, sets the rate of wages after an investigation has been had as to the prevailing rate of wages in the various communities affected. If the Department of Labor is given absolute and unhampered control over the matter of enforcing the Davis-Bacon Act, the general contractors, the subcontractors, the Government, and the workers will receive fair treatment and be satisfied with the functioning of the Davis-Bacon Act.

The last time I was before your committee, Mr. Connery, your worthy chairman, asked me a question and I answered it by saying that the law should be made so as to place the contracting officers in jail if they failed to comply with or enforce the Davis-Bacon law.

I shall presently name the contractors who have violated the law with the knowledge of the contracting officers, whose duty it was and is to see to it that the law is inforced. Perhaps these contracting officers know nothing of violations of this law, because they carry on one-sided investigations only. This is the outline of the so-called investigation: The taxpaying mechanics make affidavits of violation of the Davis-Bacon Act and with respect to inferior materials. I now say that I know of inferior construction being done under the very eyes of these contracting officers, but it does not come under any law.

These affidavits of complaint are mailed in some cases to the contracting officer while in other cases they are presented to him in person. The taxpaying mechanics who make out these affidavits of complaint are deliberately and almost disrespectfully ignored. They are not called upon or even given an opportunity to point out these specific violations of law. Engineers, commonly called inspectors, or others are assigned to investigate some of these complaints. They visit the job complained about, and I suppose they interview somebody, but I know of not one case where those who made affidavits were interviewed by the investigating officer. Can you for a moment realize this abuse of our taxpayers who make affidavits with a view to having a compliance with law? They are snobbishly ignored and are not called as witnesses to substantiate the charges.

Can you by any stretch of the imagination see any judge of a court calling up a case against an alleged law violator and then refusing to permit the Commonwealth's witnesses to testify? Why, no judge would ever do that. Nevertheless, Government contracting officers practice this. I say that the witness who makes the affidavit of complaint in these cases is not permitted to testify that the Davis-Bacon law or the 8-hour law is violated or that inferior construction is being installed.

Under that kind of investigation the inspector or others must naturally report back to the superior that the inferior work is more

than average accuracy and satisfactory according to the specifications and that the violation of the 8-hour law was a misdunderstanding on part of the violator, whatever that big, long word means.

These contractors have violated all laws relating to construction: Worshan Co.; Algernon-Blair Co.; Barnes Co.; Farnsworth Co.; Stanford Co.; Orndorff Co.; Murray-Werner Co.; Bellow, McClay Co.; Fidelity Construction Co.; and the Rose Co.

I will request this Committee on Labor to institute a real investigation of these contractors' jobs.

I have in my files affidavits of violation by the Farnsworth Co. of the 8-hour law, violation of the Davis-Bacon law, and a violation of the specifications covering the job upon which it is engaged. Complaint in regard to violation of the Davis-Bacon Act and the 8-hour law was filed with the Treasury Department on February 4, last, and to this good day I have not had any reply from the Treasury Department, and no notice yet to the effect that the violation was a misunderstanding.

Let me tell you something about this Worshan Co. It took from each man $1.02 an hour, or $8.16 a day, or $48.96 during a working week of 48 hours; this amounting to $195.84 for one man for four weeks. It took from one man $1,175.04 in six months; or $23,400.80 from 20 men in six months. What do you think of that?

Let me tell you about this man Barnes. He took a man out of an insane asylum—every poor farm is connected with an insane asylum, as you know—and gave him a contract for a consideration of $1 to tear down a building, telling him he would buy the bricks. He knew the bricks were set in cement and that the United States Government would not permit him to put secondhand bricks in that building. We have bona fide contractors who can properly do that work, without going to a poor farm to get an inmate thereof to do it. It is no wonder that such horrible conditions exist in the building industry in this country.

On the Fidelity Co. market sheds and sewer garage jobs here in the District of Columbia, Mr. Summers, a steel erector, violated the law by paying only $12 a week and board to ironworkers, and he rented a shack in which he had white men and negroes sleep together. In that instance I complained to District of Columbia officials about the violation of the wage law, without result.

I complained about steel beams being much out of plumb and an investigation was had. However, like all other such investigations, I was not called as a witness. Nevertheless, this steel work was condemned, the work was stopped, and the contractor was ordered to tear down brick and adjust steel erection. But, after all, the subcontractors had the wages that these nonunion ironworkers should have had.

I registered a complaint about steel erection against the Barnes Co. in the matter of the Jacksonville, Fla., parcel-post building. An investigation, so called, was had, but complaining witnesses were not permitted or invited to testify. I received a letter from the Treasury Department on May 10, 1932, saying that this steel erection was satisfactory.

In the matter of the Huntington, W. Va., veterans' hospital, United States Senator Hatfield, all the congressional delegation from the State of West Virginia, the Huntington Chamber of Commerce,

and almost every taxpayer in the Huntington area tried to compel a compliance with the law. I, myself, presented affidavits to proper officials, without any beneficial result. Secretary Rosenheim, of the Huntington Chamber of Commerce, and I presented evidence to proper officials, without beneficial result. The Department of Labor set the prevailing rate of wages, but Warshan, I presume, thought that $1.02 every hour out of every worker's pay—I said $8.16 a day from each man—was contractor's profit, and $8.16 a day was taken away from each rod mechanic in violation of the law. The United States judge there fined Warshan $900 for violation of the 8-hour law, but Warshan is still erecting this job as a 100 per cent responsible contractor.

Your committee might investigate 10 general contractors' jobs, but if that is too many, I will recommend the following five: The Warshan job at Huntington, W. Va.; the Blair job at Shreveport, La.; the Barnes job at Jacksonville, Fla.; the Farnsworth job at Little Rock, Ark.; and the Murray-Werner job at the Barksdale air field, Shreveport, La. The results of your investigation would prove that the Davis-Bacon Act is workable, if officials just try to have it work.

If Congress will compel the inspectors on the jobs to see that the 8-hour law and the Davis-Bacon law are compiled with the same as the specification requirements governing materials, such as granite, lime stone, are compiled with, we will be better satisfied. We understand, of course, that there is no law to compel the use of these materials, but, believe me, the inspectors do see to it that they are used according to specifications. But when the Davis-Bacon Act is involved, which has to do with personal rights, few inspectors put forth any effort to see that it is complied with. If the contractor violates the use of specified material, the inspector stops the work; but if the same contractor takes half the mechanic's wages thinking it his own profit, most inspectors are absolutely indifferent.

The CHAIRMAN. You refer to Congress doing certain corrective things. It is the job of Congress to make laws and it is the job of the Executive to execute the laws.

Mr. GAYTON. Yes; but in times past when the Executive did not enforce laws the legislative branch of the Government has instituted an investigation.

The CHAIRMAN. Yes; but I think that your first move should be to request the President to enforce the law. Ask the Secretary of Labor to effect an enforcement of the law; and then, if you are not satisfied, come here.

Mr. GAYTON. The Secretary of Labor has done everything possible, I know, to enforce a compliance with this law; still we have the bad conditions that I have, in part, outlined.

The CHAIRMAN. If the Secretary of Labor has done everything within his power, then request the President of the United States to direct his Attorney General to indict these violators.

Mr. GAYTON. I should very much like to see an investigation by the Congress.

The CHAIRMAN. To do that first-hand would mean that Congress was encroaching upon the prerogatives of the President. It is, as I have said, his job to enforce the laws.

Mr. GAYTON. I would say that if the President would make an investigation—but I am not an attorney and I don't know whether——

The CHAIRMAN (interposing). Mr. Lovette will check me on this if I am wrong. The mechanics are simple. All the President would have to do, upon receipt of a complaint, would be to call upon the Attorney General to prosecute and use the Department of Justice to gather the evidence. They would come to you and get testimony and then the Attorney General could bring a criminal indictment against these violations of the 8-hour law and those who install inferior construction. Is that not right, Judge Lovette?

Mr. LOVETTE. Yes.

Mr. GAYTON. I am of the opinion absolutely that the Davis-Bacon Act is all right; and I believe that if you will investigate the jobs being put up by the five contractors I have named you will no doubt start or unearth a scandal as great as the Teapot Dome scandal.

Mr. LOVETTE. What have you to say about the Metcalf bill, which is the thing before the committee?

Mr. GAYTON. I am against it. This is why I am opposed to it: It makes the employees on the job take affidavits. I have a brief case filled with those affidavits, and they are turned over to the various departments, and after they are turned over to them there is not one thing done.

Mr. LOVETTE. I am interested to know what is the objection to writing into the contract just what the contract is to be as regards the rate of wages?

Mr. GAYTON. If they write that in, no living man knows who is going to be Secretary of Labor, perhaps, 12 months from now.

Mr. LOVETTE. As it is you do not know who is going to be Secretary of Labor, but if there is any dispute you will have to to go him under the provisions of the Davis-Bacon Act.

Mr. GAYTON. The Secretary of Labor has his conciliators who go out and make investigations, interviewing chambers of commerce, rotaries, and everybody else who can give any helpful information.

Mr. LOVETTE. We have passed that question. The American Federation of Labor, through Mr. Green, has stated here that there is no trouble determining the rate of wages prevailing in any community. Now, the Davis-Bacon Act says that you must observe that wage scale. What I want to know is what is the objection to writing it into the contract itself. To illustrate, let us suppose that I were going to make a contract with you to erect a building and we were going to observe the prevailing rate of wages on that contract, and I would say to you, "I want to write the prevailing rate of wages into the contract," and you would say, "No, I don't want to write it into the contract." What reason would you give for not wanting to write the prevailing rate of wages into the contract?

Mr. GAYTON. It might not suit me.

Mr. LOVETTE. But in the illustration given we had agreed to the prevailing rate of wages. We had determined what the prevailing rate of wages was and had started our work on that basis. What, tell me, if you can, is the objection to writing that scale of wages into the contract?

Mr. GAYTON. You write nothing in to force it.

Mr. LOVETTE. Assuming that we do write something in it to force it. What wrong will flow from writing that into the contract; what

injury will ensue to either you or me? Neither you nor anybody else has answered that question and I have asked it of every witness. If it is objectionable to write it into the contract, there is a reason for it and some injury will result to somebody.

Mr. GAYTON. I do not know. The reason I am opposed to the entire thing is that there are no teeth in it. The Executive order has teeth in it. I understand that one contractor has been put on the spot and he is losing his contract. The general contractors—I never consider them fools.

The CHAIRMAN. What about the $10 a day provision?

Mr. GAYTON. If you would make it a $1,000 a day or a $1,000 a minute, it might be all right.

The CHAIRMAN. What is the matter with that?

Mr. GAYTON. $10 a day—what does that amount to? If a contractor can steal a $100,000 on one job, what does he care for men who make complaints on the 11th day?

The CHAIRMAN. I think that the committee will probably arrange your 9 or 10 days. I think the committee will probably fix that up if it reports the bill. Mr. Welch has some suggested amendments. Referring to H. R. 11865, page 2, he suggests striking out, beginning in line 18, the following: "If, however, the work contemplated by the contract requires more than three months for its completion," then, leaving the words "The Secretary of Labor" stand, strike out the words following "The Secretary of Labor," which are, "at the request of the head of the department, independent establishment, or other agency of the Government concerned, or on petition of the contractor of his subcontractors, or of not less than 20 laborers and/or mechanics employed on the work." That provides that the Secretary of Labor may reexamine the question of wages from time to time on his own motion.

Mr. GAYTON. Say I am a nonunion contractor. I am using nonunion men. I am paying them whatever I want to pay. They have not a word to say about what they get.

The CHAIRMAN. They have in the predetermination theory.

Mr. GAYTON. Those men are not going against me because I am nonunion. I go to a few of those fellows, and, of course, a few fellows always control the majority. Even the flies and mosquitos are like that. The few fellows have control over the masses, and the contractor calls in these few men and tells them that he calculated wrong on the job. I am not talking about a Government job. Over here they are paying $1.50 an hour. They are paying $1.50 an hour over there and I am paying you men 50 cents an hour, but I will give everybody here 75 cents on the job provided he agrees to assist me in robbing the Government of $200,000. That is agreeable and then the contractor begins to prepare his case for the Department of Labor. He tells the department, "Since I took the job wages have gone up and my men are asking for more money and on private jobs they are paying $1.50 an hour; and the law is that the wages have to go up." There is nothing to prevent that.

The CHAIRMAN. Under that amendment the Secretary of Labor would reexamine the question of the rate of wages from time to time on union and nonunion jobs on his own motion. The Secretary could conduct a thorough investigation, go over the books, and make them pay $1.50 an hour.

Mr. GAYTON. I say that if this proposed bill goes into effect the contractors will bankrupt the United States Government.

The CHAIRMAN. They will if the Secretary of Labor lets them do it.

Mr. GAYTON. They will present enough of a certain kind of evidence that the Secretary can do nothing else.

The CHAIRMAN. The prevailing rate of wages is known in every State and city. How can they bankrupt the Government?

Mr. GAYTON. The contracting officers will not to-day cooperate with the Secretary of Labor in the enforcement of the law. There isn't anything to stop them from helping a contractor raise his prices every three months.

Mr. LOVETTE. If we fix the wages before the work starts, if we write into the contract in the interest of labor what the rate of wages shall be, that will settle the matter, will it not?

Mr. GAYTON. One of them at Barksdale said, "Why don't you do something about it?" I said, "Sometimes when a fellow tells me to do something I try to do it." There was another job on which there was a strike and I went to see how he worked it. I found he worked it the same way—both ways. I would recommend again and again an investigation of those five contracts I mentioned; and after that investigation every gentleman on this committee and every Representative in Congress will say that the Davis-Bacon law is 100 per cent good.

The CHAIRMAN. Why do you, with your organization, not go to the President and ask him to enforce the law in connection with these contracts, and then come here if he will not enforce the law and we will authorize an investigation. Why put it up to this committee to do something which the President of the United States is sworn and bound to do? It is his job to enforce the laws of the United States.

Mr. GAYTON. I shall be glad to pursue that suggestion. A Congressman I interviewed regarding this job in Huntington, W. Va., told me that certain employees on the job had informed him that when the inspector went away—they have to dig down to bed rock if they do the job properly—they shoveled in clay and started to pouring concrete. He told me he would come before this committee and ask for an investigation of the job. But we get nowhere. That is the kind of contractors the Government has.

I think the Comptroller General of the United States is about the most abused man in the country. The contractors say that Mr. McCarl says the contracts must go to the lowest responsible bidders. I want to say that a postmaster over in Philadelphia is starting contracting. He has an office half as big as your desk and he is contracting. Another fellow over there, called the Quaker City Masonry Co., is contracting, and if he gets a low bid he wants to cancel the contract. What is the result of all this practice? You see it on all sides. The result is that the bona fide, qualified contractors are doing the work within the District of Columbia without resorting to the Secretary of Labor for adjudication in connection with a dispute.

The CHAIRMAN. Three or four of you gentlemen have asked an investigation by this committee, which is friendly to you. First, we suggest that you go to the President of the United States. If Mr. Green and you representatives of the building trades should go to the President in a body and say, "Mr. President, here is our proof

of violation of the law, and we want this matter cleared up; we want the law enforced," I believe it would be well. Why not try that out before coming here for an investigation?

Mr. LOVETTE. We on this committee make law. Do you want any more law?

The CHAIRMAN. You say you have the Davis-Bacon law, and you are satisfied with it, and all that is needed is enforcement of it. Therefore I would suggest that you first go to the President.

Mr. GAYTON. We have too many laws now.

(The following communication has been received for insertion in the record:)

HOUSE OF REPRESENTATIVES,
Washington, D. C., April 28, 1932.

Hon. WILLIAM P. CONNERY, Jr.,
House of Representatives, Washington, D. C.

MY DEAR COLLEAGUE: Inclosed find a letter I have received from Mr. R. L. Murphy, of the Associated General Contractors of America, with reference to Senate bill 3847. I understand you are holding hearings on the bill and as Mr. Murphy desires that his views be placed before you, I am taking the liberty of sending his communication.

With kind regards, I am, sincerely yours,

JOHN J. COCHRAN.

ASSOCIATED GENERAL CONTRACTORS OF AMERICA,
St. Louis, Mo., April 26, 1932.

Hon. JOHN J. COCHRAN, *Washington, D. C.*

MY DEAR CONGRESSMAN: I am very much pleased indeed to note that on April 18 the United States Senate passed, by unanimous consent, the Metcalf prevailing wage bill (S. 3847).

This bill provides that the rate of wages to be paid on all Government projects shall be predetermined and made a part of the specifications in the contract and provides for an adjustment of the contract price, either up or down, to take care of any changes in wage rates that may be ordered during the course of the work.

When this bill comes over to the House for consideration I hope that you will see fit to register your approval of same.

The bill was passed by the Senate after its features had been explained by Senators Frederic C. Walcott, of Connecticut, and Royal S. Copeland, of New York. They outlined the five main purposes of the bill as follows:

1. To guarantee to laborers and mechanics on Federal construction the payment of the prevailing rate of wages as made mandatory in the Davis-Bacon Act.
2. To provide for a predetermination of the prevailing wage on contracts so that the contractor may know definitely in advance of submitting his bid what his approximate labor cost will be.
3. To provide an adjustment of the contract price to meet fluctuations in prevailing wage scales during the life of the contract and to provide a penalty upon the contractor for failure to pay not less than the prevailing rate of wages.
4. To place a penalty upon the contractor who shall require laborers or mechanics to refund or rebate any wages paid less than the prevailing rate of wages.
5. To require the Government to pay at least the prevailing rate of wages on construction work performed by the Government with hired labor.

The committee report on the measure declared that its early enactment is absolutely necessary in fairness to labor and the contractors, and that it would correct the injustice and hardship worked upon the construction industry, as a result of its inability to figure the cost of labor in submitting bids for public contracts under the present Davis-Bacon Law.

I would particularly stress the fact that the constitutionality of this bill is vouched for in the Senate committee report, to which you are respectfully referred

I expect to see you on the Hill some time during the week of May 2.

In the meantime I beg to remain,

Yours very truly,

R. L. MURPHY.

NAVY DEPARTMENT,
Washington, May 7, 1932.

The CHAIRMAN COMMITTEE ON LABOR,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: The act S. 3847, entitled "An act to amend the act approved March 3, 1931, relating to the rate of wages for laborers and mechanics employed by contractors and subcontractors on public buildings," passed the Senate April 18, 1932, was introduced in the House April 22, 1932, and referred to the Committee on Labor.

The first sentence of section 3 of the said act reads:

"SEC. 3. When any of the departments or independent establishments of the United States, including the District of Columbia, perform work by Government plant and hired labor which could have been performed under contract, but not including work in arsenals or navy yards, such departments and establishments, including the District of Columbia, shall also pay not less than the prevailing rate of wages as established by the Secretary of Labor at the time the work is undertaken."

In accordance with the provisions of existing law the wages of certain classes of employees, including laborers and mechanics, in navy yards and at other naval establishments are fixed by the Secretary of the Navy.

The final enactment of S. 3847 in the form in which it passed the Senate might be construed as separating navy yards from other naval establishments or activities so far as affects the fixing of wages of employees of the Navy Department.

Should that construction of the act be adopted, it would be very likely to result in serious confusion and in dissatisfaction with consequent inefficiency among the Navy Department's employees. For instance, it is most probable that the rates of wages fixed by the Secretary of the Navy for employees at the navy yard, New York, would not be the same for all classes of employees as the rates fixed by the Secretary of Labor for employees of the Navy Department at other places in the vicinity, such as the naval hospital and the naval supply depot in Brooklyn and the naval ordnance plant at Baldwin, Long Island.

As the wages of laborers and mechanics at all those places are now fixed by the Secretary of the Navy in accordance with law, it is believed that the interests of the Government would be served better if that practice were not interrupted than if the responsibility for determination of rates of wages should be now divided, and that the employees would not be disadvantaged in any respect by maintaining the present practice.

In view of the foregoing, and of the doubt as to the interpretation that would be placed on the language of the act as it reads, it is recommended that there be inserted after the words "navy yards" in line 12, page 5, section 3 of the act, the words "or naval stations", making the exception in line 12 read "but not including work in arsenals or navy yards or naval stations."

Sincerely yours,

C. F. ADAMS, *Secretary of the Navy.*

The CHAIRMAN. If there is nothing further this morning, let us adjourn, to meet in executive session next Monday morning at 10 o'clock.

(Thereupon, at 12.30 o'clock p. m., Thursday, May 12, 1932, the committee adjourned to meet next Monday morning at 10 o'clock.)

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